

**UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF MASSACHUSETTS**

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<b>PLAINVILLE GENERATING CO., LLC,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>vs.</b>	)	<b>Case No. 05-11210-GAO</b>
	)	<b>Case No. 05-12168-GAO</b>
<b>DTE BIOMASS ENERGY, INC. and</b>	)	
<b>PLAINVILLE GAS PRODUCERS, INC.,</b>	)	
	)	
<b>Defendants.</b>	)	

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**AFFIDAVIT OF W.C. BLANTON RELATING TO  
PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION**

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W.C. Blanton, being first duly sworn, states as follows:

1. The statements made herein are based upon my personal knowledge, and I am competent to testify thereto.
2. I am one of the attorneys for Defendants DTE Biomass Energy, Inc. ("DTE Biomass") and Plainville Gas Producers, Inc. ("Plainville Gas") in the civil action encaptioned Plainville Generating Co., LLC v. DTE Biomass Energy, Inc. and Plainville Gas Producers, Inc., C.A. No. 05-11210-GAO, now pending in the United States District Court for the District Court of Massachusetts ("Lawsuit").
3. On Tuesday, November 8, I deposed Gerard C. Lorusso in connection with the Lawsuit. Excerpts from the transcript of this deposition are attached hereto as Exhibit A.
4. On Tuesday, November 8, I also deposed David E. Adams in connection with the Lawsuit. Excerpts from the transcript of this deposition are attached hereto as Exhibit B.

5. On Thursday, November 10, I deposed David LaFlamme in connection with the Lawsuit. Excerpts from the transcript of this deposition are attached hereto as Exhibit C.

6. A copy of Plainville Generating Co., LLC's Initial Disclosures Pursuant To Fed. R. Civ. P. 26(a), dated November 14, 2005, is attached hereto as Exhibit D.

Further Affiant sayeth not.



W.C. Blanton

STATE OF MISSOURI                     )  
  ) ss.  
COUNTY OF JACKSON                 )

Subscribed and sworn to before me, a notary public in and of said County and State, this 15<sup>th</sup> day of November, 2005.



Notary Public

My Commission Expires: August 25, 2007



ANGELA M. MAYS  
Jackson County  
My Commission Expires  
August 25, 2007

— **Exhibit A** —

**Excerpts From The Deposition Of Gerard C. Lorusso**

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

\*\*\*\*\*

PLAINVILLE GENERATING CO., L.L.C.,

Plaintiff

vs.

No. 05CV12168 GAO

DTE BIOMASS ENERGY, INC. and

PLAINVILLE GAS PRODUCERS, INC.,

Defendants

\*\*\*\*\*

VOLUME: I

PAGES: 1-231

DEPOSITION OF GERARD C. LORUSSO

TUESDAY, NOVEMBER 8, 2005

Page 2

1 DEPOSITION OF GERARD C. LORUSSO, a witness  
 2 called on behalf of the Defendants,  
 3 pursuant to the Federal Rules of Civil  
 4 Procedure, before Judith McGovern  
 5 Williams, Certified Shorthand Reporter  
 6 No. 130993, Registered Professional  
 7 Reporter, Certified Realtime Reporter,  
 8 Certified LiveNote Reporter, and Notary  
 9 Public in and for the Commonwealth of  
 10 Massachusetts, at the offices of Looney &  
 11 Grossman L.L.P., 101 Arch Street, Boston,  
 12 Massachusetts 02110, on Tuesday,  
 13 November 8, 2005, commencing at 2:45 p.m.  
 14  
 15  
 16  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24

Page 4

1 APPEARANCES (Continued):  
 2  
 3 - and -  
 4 DAVID JOEST, ESQUIRE  
 5 DTE Energy  
 6 425 South Main Street  
 7 Suite 201  
 8 Ann Arbor, Michigan 48104  
 9 734-913-2083  
 10 joestd@dtcs.com  
 11 all on behalf of the Defendants  
 12  
 13  
 14  
 15  
 16  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24

Page 3

1 APPEARANCES:  
 2  
 3 LeBOEUF, LAMB, GREENE & MacRAE, L.L.P.  
 4 Steven E. Ferrey, Esquire  
 5 260 Franklin Street  
 6 Boston, Massachusetts 02110-3173  
 7 617-439-9500  
 8 sferrey@llgm.com  
 9 on behalf of the Plaintiff  
 10  
 11 BLACKWELL, SANDERS, PEPER, MARTIN, L.L.P.  
 12 W.C. Blanton, Esquire  
 13 4801 Main Street  
 14 Suite 1000  
 15 Kansas City, Missouri 64112  
 16 816-983-8151  
 17 wblanton@blackwellsanders.com  
 18 - and -  
 19 LOONEY & GROSSMAN L.L.P.  
 20 Wesley S. Chused, Esquire  
 21 101 Arch Street  
 22 Boston, Massachusetts 02110-1112  
 23 617-951-2800  
 24 wchused@lgllp.com

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1 I N D E X  
 2 Witness Page  
 3 GERARD C. LORUSSO  
 4 Direct Examination by Mr. Blanton 13  
 5  
 6  
 7  
 8  
 9 E X H I B I T S  
 10 Number Page  
 11 20 Three-page Affidavit of Gerard 17  
 12 Lorusso  
 13  
 14 21 Plaintiff's Opposition to 75  
 15 Defendants' Motion to Dismiss  
 16  
 17 22 Multipage Affidavit of Gerard 17  
 18 Lorusso in Support of Motion  
 19 for Injunction  
 20  
 21 23 Plaintiff's Motion for 127  
 22 Preliminary Injunction  
 23  
 24 24 Memorandum of Law in Support 127

2 (Pages 2 to 5)

Page 10

1 October 27, 2004, to  
2 Mr. Lorusso from Mr. Ranger  
3  
4 50 Exhibit 50 not marked  
5  
6 51 One-page letter dated 149  
7 December 13, 2004, to  
8 Mr. Lorusso from Mr. Russell  
9 and attachment  
10  
11 52 Two-page letter dated 150  
12 December 20, 2004, to  
13 Mr. Russell from Mr. Ferrey  
14  
15 53 One-page letter dated 152  
16 December 20, 2004, to  
17 Mr. Ferrey from Mr. Endler  
18  
19 54 Three-page letter dated 153  
20 December 21, 2004, to  
21 Mr. Ferrey from Mr. Joest  
22  
23 55 One-page letter dated 154  
24 January 6, 2005, to Mr. Ferrey

Page 11

1 from Mr. Russell  
2  
3 56 One-page letter dated 155  
4 January 14, 2005, to Mr. Ranger  
5 from Mr. Grilli  
6  
7 57 Four-page letter dated 225  
8 April 15, 2003, to Mr. Larimore  
9 from Mr. Chapin and attachment  
10  
11 58 Four-page letter dated 226  
12 July 11, 2003, to Mr. Larimore  
13 from Mr. Chapin and attachment  
14  
15 59 Four-page letter dated 226  
16 October 24, 2003, to  
17 Mr. Larimore from  
18 Mr. Chapin and attachment  
19  
20 60 Four-page letter dated 226  
21 April 28, 2004, to Mr. Larimore  
22 from Mr. Chapin  
23  
24 61 Four-page letter dated 227

Page 12

1 August 17, 2004, to  
2 Mr. Larimore from  
3 Mr. Chapin and attachment  
4  
5 62 Four-page letter dated 227  
6 December 15, 2004, to  
7 Mr. Larimore from  
8 Mr. Chapin and attachment  
9  
10 63 Four-page letter dated 227  
11 April 26, 2005, to  
12 Mr. Larimore from  
13 Mr. Chapin and attachment  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

Page 13

1 PROCEEDINGS  
2 ---  
3 It is hereby stipulated and  
4 agreed by and between counsel for the  
5 respective parties that the witness will  
6 read and sign the deposition transcript  
7 before any notary public within 30 days of  
8 receipt of same. The filing of the  
9 deposition is waived.  
10 It is further stipulated and  
11 agreed that all objections, except as to  
12 the form of the questions, and motions to  
13 strike are reserved until the time of  
14 trial.  
15 ---  
16 GERARD C. LORUSSO, first having  
17 been duly sworn, testified as follows in  
18 answer to direct examination by  
19 MR. BLANTON:  
20 ---  
21 Q. Mr. Lorusso, as you know, I am W.C.  
22 Blanton. I am counsel to the defendants  
23 in the lawsuit that Plainville Generating  
24 Company has filed against DTE Biomass

4 (Pages 10 to 13)

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1 Energy and Plainville Gas Producers that  
 2 is pending in the United States District  
 3 Court for the District of Massachusetts.  
 4 I understand you are familiar with that  
 5 litigation; is that correct?  
 6 A. I am.  
 7 MR. BLANTON: Before we begin  
 8 your actual testimony, I want to confirm  
 9 on the record with Mr. Ferrey that we have  
 10 the same sets of stipulations and  
 11 procedural agreements with respect to  
 12 Mr. Lorusso's deposition that we had with  
 13 that of Mr. Adams just concluded. Is that  
 14 correct?  
 15 MR. FERREY: That's correct.  
 16 BY MR. BLANTON:  
 17 Q. Mr. Lorusso, have you ever been deposed  
 18 before?  
 19 A. I believe I was.  
 20 Q. What was the context in which you were  
 21 deposed? What was going on? Why did you  
 22 have your deposition taken?  
 23 A. Gee, I have to remember back. You know, I  
 24 can't recall the nature of the suit.

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1 Q. Were you a party?  
 2 A. Yes.  
 3 Q. Was it a business dispute?  
 4 A. Yes.  
 5 Q. Between one of your companies or a company  
 6 you are affiliated with and somebody else?  
 7 A. That's correct.  
 8 Q. Do you recall generally what the subject  
 9 matter was?  
 10 A. I think it had to do with a land dispute.  
 11 Q. Okay. And you are familiar generally that  
 12 the court reporter takes down everything  
 13 that everyone in the room says during the  
 14 course of the deposition, so it is  
 15 important that only one person speak at a  
 16 time. I will try not to step on your  
 17 answers, but my questions, as everyone  
 18 else now knows, tend to go on for some  
 19 length sometimes, so please be sure that I  
 20 am done before you start answering. Okay?  
 21 A. Yes.  
 22 Q. And it is important that you answer  
 23 questions audibly rather than with hand or  
 24 head gestures. All right?

Page 16

1 A. Yes.  
 2 Q. If you are answering yes or no, just the  
 3 full words or something similar to yes and  
 4 no rather than um-hmms and uh-huhs, which  
 5 are hard to distinguish. Okay?  
 6 A. Certainly.  
 7 Q. Do you have any conditions of any sort  
 8 that would interfere with your ability to  
 9 understand questions and answer accurately  
 10 during the course of your deposition?  
 11 A. I don't believe so.  
 12 Q. Are you taking any medications that would  
 13 interfere in any way with your ability to  
 14 participate in the deposition?  
 15 A. No, I am not.  
 16 Q. If during the course of the deposition you  
 17 can't -- you don't understand my question  
 18 or I'm not speaking up, could you please  
 19 let me know? Because it is important that  
 20 we are talking about the same thing. I  
 21 want to make sure you at least think you  
 22 have made yourself clear about what I am  
 23 asking. All right?  
 24 A. Yes.

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1 (Three-page Affidavit of Gerard  
 2 Lorusso marked Exhibit No. 20  
 3 for identification.)  
 4 BY MR. BLANTON:  
 5 Q. I want to first show you a document that  
 6 has been marked in this case as  
 7 Exhibit 20.  
 8 (Handing Exhibit No. 20 to the  
 9 witness.)  
 10 Q. I ask if this is an affidavit that you  
 11 executed in connection with the lawsuit  
 12 involved here.  
 13 (Pause.)  
 14 (The witness viewing Exhibit  
 15 No. 20.)  
 16 A. Yes, it is.  
 17 (Multipage Affidavit of Gerard  
 18 Lorusso in Support of Motion  
 19 for Injunction marked Exhibit  
 20 No. 22 for identification.)  
 21 BY MR. BLANTON:  
 22 Q. I am going to show you a document that has  
 23 been marked as Exhibit 22.  
 24 (Handing Exhibit No. 22 to the

5 (Pages 14 to 17)



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1 MR. FERREY: Objection on  
2 relevancy to this, to anything in the  
3 affidavit.  
4 A. I don't recall.  
5 Q. Who would know?  
6 A. Mr. Grilli.  
7 Q. What is the company that is currently  
8 operating the landfill gas collection and  
9 delivery system at the Plainville  
10 Landfill?  
11 A. It was recently formed.  
12 Q. What is the name of it?  
13 A. I don't recall.  
14 Q. What is your best guess?  
15 A. I wouldn't.  
16 Q. Who would know?  
17 A. Mr. LaFlamme would know.  
18 Q. Why was a new company formed?  
19 A. It was decided to form a new company to  
20 do --  
21 Q. Was it in order to take advantage of tax  
22 credits that might be available under the  
23 U. S. Tax Code?  
24 A. I am far from an expert on the tax code.

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1 Q. I know. But you would know in your  
2 business. If you are doing renewable  
3 energy tax credits, they are a big deal,  
4 so I would think you would know whether  
5 you are trying to take advantage of tax  
6 credits in your business now that you have  
7 the rights to collect the gas at the  
8 landfill.  
9 A. And the question again was?  
10 Q. Was it formed in part to be able to take  
11 advantage of tax credit possibilities for  
12 renewable energy?  
13 A. Yes.  
14 Q. Okay. Do you know whether there has been  
15 an assignment of the contract between  
16 Allied Waste Management -- Allied Waste  
17 Systems and Lorusso Corp.?  
18 Let me back up.  
19 On July 27, 2005, you signed the  
20 assignment of DTE Biomass' or Plainville  
21 Gas Producers' contract with Allied Waste  
22 Systems for the gas collection and  
23 delivery system at the Plainville  
24 Landfill, correct, on behalf of Lorusso

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1 Corp.?  
2 A. Yes.  
3 Q. Has that contract been subsequently  
4 assigned to this newly-formed company?  
5 A. I'm not sure.  
6 Q. Is it intended to be assigned to the new  
7 company?  
8 A. Yes.  
9 Q. And is it correct that the new company was  
10 formed at least in part for the purpose of  
11 being able to receive that assignment?  
12 A. Yes.  
13 Q. And one of the benefits of having a new  
14 company receive the assignment was to take  
15 advantage of the tax credit possibilities  
16 for operating a landfill gas collection  
17 and delivery system; correct?  
18 A. I have not -- again I have not gone  
19 through all of the tax ramifications.  
20 Q. Okay. Mr. LaFlamme and Mr. Grilli would  
21 know that?  
22 A. I expect they would.  
23 Q. Who handled the creation of what -- was a  
24 lawyer involved in setting up the new

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1 corporation, outside counsel?  
2 A. I'm not sure.  
3 Q. Sometime ago, I believe that Lorusso Corp.  
4 notified Plainville Gas Producers and/or  
5 DTE Biomass Energy that Lorusso Corp. was  
6 going to assign to Plainville Generating  
7 Company the contract between Lorusso Corp.  
8 and DTE Biomass for the delivery of gas to  
9 the generating plant; is that right?  
10 A. Who was assigning what?  
11 Q. Lorusso Corp. told DTE or Plainville Gas  
12 Producers -- I don't remember which --  
13 that Lorusso Corp. intended to assign the  
14 gas supply agreement to an affiliate,  
15 which we understand to be Plainville  
16 Generating Company. Do you recall that?  
17 A. Yes.  
18 Q. And was that assignment made eventually?  
19 A. I believe it was.  
20 Q. Okay. And who would have copies of that  
21 assignment?  
22 A. Who physically?  
23 Q. Yes.  
24 A. I don't know who physically would have

11 (Pages 38 to 41)



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1 them.  
 2 Q. But Plainville -- both Lorusso Corp. and  
 3 Plainville Generating Company would have  
 4 copies in their corporate records;  
 5 correct?  
 6 A. If there was an assignment made, there  
 7 would be a record.  
 8 Q. Does Mr. Grilli have the responsibility  
 9 for the accounting and tax functions for  
 10 all of the Lorusso businesses?  
 11 A. Yes.  
 12 Q. Can you describe for me the -- how the  
 13 generating plant operates, what sort of  
 14 equipment it has, what it does, the  
 15 electrical generating plant that  
 16 Plainville Generating Company owns and  
 17 operates?  
 18 A. What would you like to know about it?  
 19 Q. Just a general description of the  
 20 facility, how it is -- what is there, what  
 21 it does.  
 22 A. It is a concrete block building with a  
 23 flat roof. There are seven 3516 CAT  
 24 engine generator sets in it that are

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1 modified to run on methane gas. It has a  
 2 gas cleanup system that cleans most -- a  
 3 significant amount of the water moisture  
 4 out of the gas.  
 5 Q. Anything else?  
 6 A. That's about it.  
 7 Q. What do these engines -- these generators  
 8 produce electricity; correct?  
 9 A. Yes.  
 10 Q. Does Plainville Generating sell the  
 11 electricity generated that it generates?  
 12 A. Yes.  
 13 Q. Does it have a specific customer to whom  
 14 it delivers electricity?  
 15 A. Yes, it does.  
 16 Q. Who is that? What is that is probably a  
 17 better question.  
 18 A. I don't recall the name.  
 19 Q. With all due respect, that is pretty hard  
 20 to believe. It is a major revenue source  
 21 for your businesses; right?  
 22 A. Yes, it is.  
 23 Q. And you don't know who you are doing  
 24 business with to sell your electricity in

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1 this lawsuit that you are claiming  
 2 millions of dollars in damages for not  
 3 being able to sell as much electricity as  
 4 you want to to this unknown entity? Come  
 5 on. Who is it?  
 6 A. I knew at the time that we negotiated the  
 7 agreement.  
 8 Q. Okay. Is it a public utility?  
 9 A. I don't believe it is.  
 10 Q. Is it a co-op?  
 11 A. I don't know what -- I don't recall the  
 12 structure.  
 13 Q. Do you sell electricity to this unknown  
 14 entity by -- pursuant to a written  
 15 contract?  
 16 A. It is not an unknown.  
 17 Q. I am sorry. You are right. I apologize.  
 18 Do you sell electricity to this  
 19 customer via a written contract?  
 20 A. Yes.  
 21 Q. Who has possession of the contract, your  
 22 copy or your company's copy?  
 23 A. It would be in the office.  
 24 Q. Okay. What are the general terms upon

Page 45

1 which you sell electricity to this  
 2 customer?  
 3 A. They take our output.  
 4 Q. All of it?  
 5 A. I believe so.  
 6 Q. And what is the price at which they  
 7 purchase electricity from you?  
 8 A. It varies year to year.  
 9 Q. What is the price per unit amount of  
 10 electricity?  
 11 A. I wouldn't -- I wouldn't recall.  
 12 Q. What is the range of payment -- of revenue  
 13 that Plainville Generating has generated  
 14 from the sales of electricity in the years  
 15 since it was -- began operating the plant?  
 16 A. I would have to add it up.  
 17 Q. What is the approximate amount per year?  
 18 A. Several million dollars.  
 19 (Interruption at the door.)  
 20 MR. BLANTON: Let's go off the  
 21 record for a second.  
 22 (Discussion off the record,  
 23 followed by a recess taken at 3:23 p.m.)  
 24 (Recess ended at 3:28 p.m.)

12 (Pages 42 to 45)

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1 A. That's confusing.  
 2 Q. If he is operating Plainville Generating  
 3 Company for Plainville Generating Company,  
 4 it is still Plainville Generating Company  
 5 that is generating electricity, isn't it?  
 6 A. Yes.  
 7 Q. And if there is somebody from DTE who is  
 8 operating the landfill collection system  
 9 on behalf of Plainville Gas Producers, it  
 10 is still Plainville Gas Producers that is  
 11 running the collection system, isn't it?  
 12 MR. FERREY: Objection. That is  
 13 a legal conclusion.  
 14 Q. In the way you would think of things?  
 15 A. I wouldn't know.  
 16 Q. Let me have you look at Exhibit 22, your  
 17 other affidavit.  
 18 (Handing Exhibit No. 22 to the  
 19 witness.)  
 20 A. Yes.  
 21 (Witness complying.)  
 22 Q. If you would look at paragraph 5 beginning  
 23 on page 3.  
 24 (Witness complying.)

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1 A. Yes.  
 2 Q. At the bottom of that page, the last  
 3 sentence, carrying over to pages 4 and 5,  
 4 the rest of the paragraph, could you  
 5 review that, please?  
 6 A. Starting with: "None of the essential  
 7 information"?  
 8 Q. Yes.  
 9 (Pause.)  
 10 (The witness viewing Exhibit  
 11 No. 22.)  
 12 Q. How did you -- how was this list of items  
 13 necessary for the contractual obligations  
 14 and complying with the law developed?  
 15 A. I'm not sure.  
 16 Q. Before you executed -- did you execute  
 17 this affidavit on October 11, 2005?  
 18 A. Yes, I did.  
 19 Q. How did you know that what you said in  
 20 this paragraph starting with the last  
 21 sentence on page 3 was correct and  
 22 accurate?  
 23 A. I spoke with my attorney about it.  
 24 Q. Did he tell you where he had gotten this

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1 list?  
 2 A. I don't think I asked him, and I don't  
 3 think he said to me where it came from.  
 4 Q. Did he tell you that this was an accurate  
 5 statement?  
 6 A. Yes.  
 7 Q. Do you know how any of these documents are  
 8 necessary for operating the collection and  
 9 delivery system in accordance with  
 10 contractual obligations and requirements  
 11 of law?  
 12 A. Do I know how they're important?  
 13 Q. Yes.  
 14 A. Yes.  
 15 Q. Okay. Can you explain how they're  
 16 important in as much detail as you know  
 17 personally?  
 18 A. Certainly. As-built drawings would be  
 19 required so that we could determine where  
 20 the collection system was out on the  
 21 landfill.  
 22 Q. Go ahead.  
 23 A. We would need current air and solid waste  
 24 operating permits to make sure that

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1 whatever we were responsible for we were  
 2 complying with permit requirements.  
 3 Whatever O and M plan existed  
 4 for the facility, we would have wanted to  
 5 make certain that we continued or we  
 6 performed whatever was required between  
 7 the owner of the landfill and the operator  
 8 of the system.  
 9 Keys and locks we would want to  
 10 have access.  
 11 Q. Go ahead.  
 12 A. The existing gas collection site plan  
 13 would be required also to operate the  
 14 system so we knew where all the components  
 15 of it were.  
 16 Q. Let me interrupt you. Would it be fair to  
 17 say that it is -- it was your opinion at  
 18 the time that you executed this affidavit  
 19 that there would be activities carried out  
 20 at the landfill by Lorusso-connected folks  
 21 that required all of these materials in  
 22 order to actually do the activities  
 23 necessary to operate and maintain the gas  
 24 collection and delivery system at the

22 (Pages 82 to 85)

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1 in the office at the landfill, an office  
 2 that Biomass was, I guess, allowed to use.  
 3 Q. Anything else?  
 4 A. I recall there being some old paper charts  
 5 from one of the flares and some, I  
 6 believe, original collection system  
 7 drawings for early portions of the  
 8 collection system, but nothing current.  
 9 Q. Anything else?  
 10 A. That's all I presently recall.  
 11 Q. Do you recall there being an operations  
 12 manual created after the generating plant  
 13 was built, and there were certain changes  
 14 to the gas collection delivery system  
 15 instructed by Plainville Gas Producers?  
 16 Were you aware that there was an  
 17 operations manual created in connection  
 18 with the transition from the asphalt plant  
 19 to the generating plant?  
 20 A. I am not.  
 21 Q. Who would know whether -- who on your  
 22 behalf would have known whether or not  
 23 there was such a manual and who would have  
 24 been responsible for obtaining and

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1 maintaining it on behalf of your  
 2 companies?  
 3 A. As to the first part of that question, was  
 4 who would have?  
 5 Q. Who on your behalf would have been  
 6 responsible for obtaining and maintaining  
 7 any operations manuals provided to your  
 8 company in connection with the transition  
 9 to the generating plant?  
 10 A. Both Dave LaFlamme and Henry Grilli.  
 11 Q. And you have never heard of them being  
 12 provided such a manual?  
 13 A. That's correct.  
 14 Q. Since September 1 -- or since July 27,  
 15 2005, have you made -- has your company  
 16 made any effort to obtain any of the  
 17 materials listed in your affidavit from  
 18 Allied?  
 19 A. Yes, we have.  
 20 Q. Have you obtained some of those materials  
 21 from them?  
 22 A. I don't believe we have.  
 23 Q. Have you had -- can you describe for me  
 24 the contact that your company

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1 representatives have had with Allied  
 2 representatives since July 27, 2005,  
 3 regarding your assuming responsibility for  
 4 operating the landfill gas collection and  
 5 delivery system?  
 6 A. I know I have been personally involved in  
 7 phone calls, conference calls with Allied,  
 8 and Dave has been in contact with several  
 9 people at Allied.  
 10 Q. What has been the nature of the  
 11 discussions with Allied?  
 12 A. The conference calls I was involved in  
 13 were just talking about the transition.  
 14 Q. What aspects of the transition?  
 15 A. Operational.  
 16 Q. Has Plainville Generating been operating  
 17 the collection and delivery system since  
 18 September 1, 2005?  
 19 A. Yes.  
 20 Q. Has the -- do you know what the delivery  
 21 rate has been for September and October of  
 22 2005?  
 23 A. Off the top of my head, I do not.  
 24 Q. Do you know if there have been any

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1 significant changes in it, either up or  
 2 down, since the period May through August  
 3 of 2005?  
 4 A. Not significant.  
 5 Q. Have you all done any repairs to the gas  
 6 collection and delivery system since  
 7 taking over on September 1?  
 8 A. No.  
 9 Q. Have you all done any maintenance -- what  
 10 would be considered maintenance on that  
 11 system?  
 12 A. We're developing a plan.  
 13 Q. But you haven't done anything yet  
 14 physically to the system?  
 15 A. To maintain it?  
 16 Q. Yes.  
 17 A. I can't -- I can't say with certainty we  
 18 have done nothing.  
 19 Q. Okay. What have you done, if you know?  
 20 A. Dave LaFlamme would be handling that  
 21 aspect of it.  
 22 Q. Okay. Do you know whether you have done  
 23 any modifications to the system?  
 24 A. I wouldn't know.

24 (Pages 90 to 93)

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1 Q. Have you hired any consultants to advise  
 2 you on possible repairs or modifications  
 3 to the system?  
 4 A. No.  
 5 Q. Did you personally have any discussions  
 6 with anybody affiliated with Biomass or  
 7 Plainville Gas Producers regarding the  
 8 transition -- the assignment of  
 9 responsibility to operate the landfill  
 10 collection and delivery system?  
 11 A. I don't recall.  
 12 Q. Do you know if anyone else affiliated with  
 13 your company has had any discussion with  
 14 the Biomass or Plainville Gas Producers  
 15 people about the transition?  
 16 A. I don't recall specifically.  
 17 Q. Could you go back to paragraph 5 on page 3  
 18 of your exhibit -- your affidavit that is  
 19 Exhibit 20. Maybe it is 22. I can't read  
 20 my own writing. The one in support of  
 21 motion for injunction.  
 22 A. 22?  
 23 Q. Yes, sorry.  
 24 (Pause.)

Page 95

1 (The witness viewing Exhibit  
 2 No. 22.)  
 3 Q. It is about the third sentence of that  
 4 paragraph, "An officer of plaintiff wrote  
 5 to Rick DiGia" ?  
 6 A. Yes.  
 7 Q. Do you know of any written communication  
 8 from anybody affiliated with your  
 9 companies to the DTE or Plainville Gas  
 10 Producers people before that letter?  
 11 A. I don't recall at this moment.  
 12 Q. Do you know of any efforts folks on --  
 13 what efforts your folks made between  
 14 July 27th and August 23rd, 2005, to get  
 15 themselves ready to take over the gas  
 16 collection and delivery system?  
 17 A. As my affidavit said, we made the request  
 18 for information.  
 19 Q. Okay. Do you know who made it?  
 20 A. I believe it was Mr. Grilli.  
 21 Q. Do you know who he contacted?  
 22 A. I believe it was Rick DiGia.  
 23 Q. Do you remember about when that was or any  
 24 of the details of the conversation?

Page 96

1 A. I wasn't involved.  
 2 Q. The first sentence of paragraph 5, who is  
 3 your counsel that is referenced in that  
 4 paragraph?  
 5 A. Attorney Ferrey.  
 6 Q. And who is defendants' counsel that is --  
 7 A. I don't know.  
 8 Q. Tell me as much as you remember about the  
 9 conversation in which Mr. Ferrey told you  
 10 the things that supposedly happened in  
 11 this first sentence.  
 12 A. Just as it states. We had a conversation  
 13 and -- on any number of matters.  
 14 Q. Did you understand when he told you  
 15 "defendants' counsel" that he was talking  
 16 about the lawyers representing the  
 17 defendants in this lawsuit or somebody  
 18 else?  
 19 A. This lawsuit.  
 20 Q. And do you know whether in your contact  
 21 with Allied involving the transition  
 22 whether they ever expressed any views  
 23 about whether or not DTE folks and  
 24 Plainville Gas Producers people should be

Page 97

1 involved in a three-way meeting about the  
 2 transition or whether they thought that  
 3 was not necessary or they preferred  
 4 otherwise?  
 5 A. I don't recall that coming up.  
 6 Q. Okay.  
 7 MR. BLANTON: Can we take about  
 8 a five-minute break?  
 9 (Recess taken at 4:54 p.m.)  
 10 (Recess ended at 5:02 p.m.)  
 11 BY MR. BLANTON:  
 12 Q. Okay. New topic. In connection with the  
 13 transition to the generator plant, we  
 14 already indicated there were some changes  
 15 to the gas collection and delivery system  
 16 that needed to be done; right?  
 17 A. Transitioning from the asphalt plant to  
 18 the?  
 19 Q. From the asphalt to the generating plant.  
 20 A. Yes.  
 21 Q. And I think there was a schedule of things  
 22 to be done attached to the contract, the  
 23 new contract, that is Exhibit B to the new  
 24 Complaint that is Exhibit 25. Can you

25 (Pages 94 to 97)



Page 110

1 electricity since the generating plant  
 2 went into effect?  
 3 A. That's correct.  
 4 Q. Can you be more accurate than millions?  
 5 That is a pretty big range. How much --  
 6 what are the total revenues to Lorusso  
 7 companies from this generating plant since  
 8 it began operation in 2003?  
 9 A. I would have to add it up on kind of a  
 10 month-by-month basis and do some  
 11 arithmetic.  
 12 Q. I assume that somebody has done that,  
 13 because one of your affidavits said you  
 14 had damages, losses, of \$300,000 as of  
 15 late 2004.  
 16 A. That's correct.  
 17 Q. And I assume that is based upon we  
 18 generated and sold this much electricity  
 19 and made this much, and if this had gone  
 20 on, we would have done that much more;  
 21 right?  
 22 A. That's correct.  
 23 Q. All right. What was the first number, the  
 24 amount that you actually made?

Page 111

1 A. At the risk of sounding stupid, I don't --  
 2 I don't retain all of that information in  
 3 my head.  
 4 Q. Okay. Would it be less than \$10 million?  
 5 A. Since inception?  
 6 Q. Yes.  
 7 A. The gross revenues generated?  
 8 Q. Right.  
 9 A. Yes.  
 10 Q. Between five and ten?  
 11 A. Yes.  
 12 Q. Who calculated the a little more than  
 13 \$300,000 in damages number?  
 14 A. Mr. Grilli and I put that number together.  
 15 Q. Is there a direct proportion between the  
 16 amount of electricity generated and the  
 17 amount of revenues off of the generating  
 18 plant?  
 19 A. Yes.  
 20 Q. Is there a direct proportion between the  
 21 amount of gas delivered to the generating  
 22 plant and the amount of electricity  
 23 generated up to the capacity of the seven  
 24 generators?

Page 112

1 A. It is not a -- it is not a perfect ratio  
 2 -- not a perfectly proportional analysis.  
 3 Q. But it would be roughly directly  
 4 proportional?  
 5 A. Yes. Gas quality enters into it.  
 6 Q. Okay. Assuming that the gas quality were  
 7 equivalent, were the same, --  
 8 A. Yes.  
 9 Q. -- you held that constant, then there  
 10 would be a direct -- roughly a direct  
 11 proportion between the amount of gas  
 12 delivered and the amount of electricity  
 13 generated and, therefore, the amount of  
 14 revenue generated?  
 15 A. There should be.  
 16 Q. Okay. Is there -- in your affidavit  
 17 roughly you had said that there had been  
 18 about double the amount of damages as of I  
 19 think the time you sought the preliminary  
 20 injunction; is that correct?  
 21 A. Correct.  
 22 Q. And that would be based on the same  
 23 principle that the reduced gas delivery  
 24 resulted in less electricity being

Page 113

1 generated and, therefore, less revenue?  
 2 A. That's correct.  
 3 Q. Can you explain -- okay. I will come back  
 4 to that.  
 5 What is the -- how much was the  
 6 capital investment to build the generating  
 7 plant?  
 8 A. Approximately \$6 million.  
 9 Q. What generally is the depreciation  
 10 schedule? Do you have different -- do you  
 11 know what the overall time period is to  
 12 depreciate that amount? I assume there  
 13 are different amounts -- different  
 14 schedules for different pieces of  
 15 equipment, --  
 16 A. Yes.  
 17 Q. -- the structure and stuff?  
 18 A. Right. It is an assumption on my part.  
 19 It would be a seven to ten year on the  
 20 operating equipment.  
 21 Q. How much have you paid Plainville Gas  
 22 Producers for the gas used at the  
 23 generating plant since inception roughly?  
 24 A. From memory?

29 (Pages 110 to 113)

Page 114

1 Q. Yes.  
 2 A. Since the inception of the plant?  
 3 Q. Generating plant.  
 4 A. It's an estimate on my part.  
 5 Q. Roughly?  
 6 A. A few hundred thousand dollars. I am  
 7 sorry. It stopped in the end of July.  
 8 Q. Right.  
 9 A. So maybe \$175,000.  
 10 Q. What are the categories of other operating  
 11 expenses that you have at the generating  
 12 plant?  
 13 A. Typical production costs: labor,  
 14 maintenance -- labor, parts, there is a  
 15 small electric bill, fluids, insurance,  
 16 you know, the typical production-related  
 17 expenses.  
 18 Q. Okay. What are your total operating  
 19 expenses since inception roughly?  
 20 A. I wouldn't know off the top of my head.  
 21 Q. What would be your best estimate of the --  
 22 now we are off into accounting, which is  
 23 something I really don't know anything  
 24 about, and so, you know, I don't know what

Page 115

1 all the acronyms are -- but for before tax  
 2 net profit, what roughly would you have  
 3 made off of this generating plant since  
 4 inception?  
 5 A. I wouldn't have that number in my head.  
 6 Q. Also millions of dollars?  
 7 A. Could it be over a million dollars? It  
 8 could be over a million dollars.  
 9 Q. One of your contentions in this lawsuit is  
 10 that the defendants are responsible for  
 11 landfill gas migrating offsite and,  
 12 therefore, not being available for the  
 13 collection system to deliver it to your  
 14 generating facility; right?  
 15 A. Yes.  
 16 Q. Why do you contend that it is the  
 17 defendants' responsibility?  
 18 MR. FERREY: Objection. That  
 19 may mischaracterize the claim, but you can  
 20 answer.  
 21 A. Why am I contending that?  
 22 Q. Yes.  
 23 A. I think in a simple understanding of the  
 24 way the system should work would suggest

Page 116

1 it.  
 2 Q. Okay. Explain it to me.  
 3 A. Gas is produced. If a collection system  
 4 is working properly, not only will the gas  
 5 be produced, but it will be collected in  
 6 the collection -- the collection system  
 7 and delivered to whatever the end use may  
 8 be, whether it is flares or whether it is  
 9 a generating plant or an asphalt plant.  
 10 Q. Are you aware of any reasons why gas would  
 11 migrate offsite other than the collection  
 12 system is not properly functioning?  
 13 A. It's beyond my area of expertise.  
 14 Q. Do you know of any contractual -- do you  
 15 know who the entity is that under the  
 16 environmental laws has the responsibility  
 17 of making sure that there is not migration  
 18 of landfill gas offsite above a certain  
 19 level?  
 20 A. It would be the owner.  
 21 Q. Are you aware of any contractual  
 22 obligations of the landfill gas collection  
 23 and delivery system to the owner that the  
 24 owner of the system would assume those

Page 117

1 legal responsibilities?  
 2 A. I mean I think that is an interpretation  
 3 that is beyond me.  
 4 Q. Are you aware that Allied received a  
 5 notice from the Massachusetts Department  
 6 of Environmental Protection in the summer  
 7 of 2004 in which the department alleged  
 8 that there was migration offsite of  
 9 landfill gas in excess of what was allowed  
 10 under the laws?  
 11 A. I'm aware of that.  
 12 Q. Are you aware that Allied and its  
 13 consultant, URS, has been working since  
 14 then to address that issue?  
 15 A. I'm aware of that.  
 16 Q. Has anyone at Allied suggested to anyone  
 17 at the Lorusso companies that now that  
 18 Lorusso is responsible for the gas  
 19 collection and delivery system that it is  
 20 Lorusso's responsibility to at least  
 21 participate in addressing this issue with  
 22 the DEP?  
 23 A. That has not come up at this point.  
 24 Q. Since September 1, 2005, has any of your

30 (Pages 114 to 117)

Page 226

1 marked Exhibit No. 57 for  
 2 identification.)  
 3 MR. FERREY: That is 57?  
 4 MR. BLANTON: Yes. Here they  
 5 are. You have got your set; right?  
 6 MR. FERREY: Yes.  
 7 MR. BLANTON: Okay. Exhibit 58  
 8 is the July 11, 2003 document.  
 9 (Four-page letter dated  
 10 July 11, 2003, to Mr. Larimore  
 11 from Mr. Chapin and attachment  
 12 marked Exhibit No. 58 for  
 13 identification.)  
 14 MR. BLANTON: Exhibit 59 is the  
 15 October 24, 2003 document.  
 16 (Four-page letter dated  
 17 October 24, 2003, to  
 18 Mr. Larimore from  
 19 Mr. Chapin and attachment  
 20 marked Exhibit No. 59 for  
 21 identification.)  
 22 MR. BLANTON: Exhibit 60 is the  
 23 April 28, 2004 document.  
 24 (Four-page letter dated

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1 April 28, 2004, to Mr. Larimore  
 2 from Mr. Chapin marked Exhibit  
 3 No. 60 for identification.)  
 4 MR. BLANTON: Exhibit 61 is the  
 5 August 17, 2004 document.  
 6 (Four-page letter dated  
 7 August 17, 2004, to  
 8 Mr. Larimore from  
 9 Mr. Chapin and attachment  
 10 marked Exhibit No. 61 for  
 11 identification.)  
 12 MR. BLANTON: Exhibit 62 is the  
 13 December 15, 2004 document.  
 14 (Four-page letter dated  
 15 December 15, 2004, to  
 16 Mr. Larimore from  
 17 Mr. Chapin and attachment  
 18 marked Exhibit No. 62 for  
 19 identification.)  
 20 MR. BLANTON: Exhibit 63 is the  
 21 April 26, 2005 document.  
 22 (Four-page letter dated  
 23 April 26, 2005, to  
 24 Mr. Larimore from

Page 228

1 Mr. Chapin and attachment  
 2 marked Exhibit No. 63 for  
 3 identification.)  
 4 MR. BLANTON: And that's all of  
 5 them.  
 6 (Whereupon, at 8:37 p.m., the  
 7 deposition was adjourned.)  
 8  
 9  
 10  
 11  
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 15  
 16  
 17  
 18  
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 21  
 22  
 23  
 24

Page 229

1 DEPONENT'S ERRATA SHEET  
 2 AND SIGNATURE INSTRUCTIONS  
 3 The original of the Errata Sheet has been  
 4 delivered to Steven E. Ferrey, Esq.  
 5 When the Errata Sheet has been completed  
 6 by the deponent and signed, a copy thereof  
 7 should be delivered to each party of  
 8 record and the ORIGINAL delivered to W.C.  
 9 Blanton, Esq., to whom the original  
 10 deposition transcript was delivered.  
 11  
 12  
 13  
 14

## INSTRUCTIONS TO DEPONENT

15 After reading this volume of  
 your deposition, indicate any corrections  
 or changes to your testimony and the  
 reasons therefor on the Errata Sheet  
 16 supplied to you and sign it. DO NOT make  
 marks or notations on the transcript  
 17 volume itself.  
 18 REPLACE THIS PAGE OF THE TRANSCRIPT WITH  
 19 THE COMPLETED AND SIGNED ERRATA SHEET WHEN  
 20 RECEIVED.  
 21  
 22  
 23  
 24

58 (Pages 226 to 229)



Page 230

ATTACH TO DEPOSITION OF: GERARD C.  
LORUSSO

CASE: PLAINVILLE GENERATING CO., L.L.C.  
VS. DTE BIOMASS ENERGY, INC. and  
PLAINVILLE GAS PRODUCERS, INC.

## ERRATA SHEET

INSTRUCTIONS: After reading the transcript of your deposition, note any change or correction to your testimony and the reason therefor on this sheet. DO NOT make any marks or notations on the transcript volume itself. Sign and date this errata sheet (before a Notary Public, if required). Refer to Page 229 of the transcript for errata sheet distribution instructions.

## PAGE LINE

CHANGE:

REASON:

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REASON:

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REASON:

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CHANGE:

REASON:

I have read the foregoing transcript of my testimony, and except for any corrections or changes noted above, I hereby subscribe to the transcript as an accurate record of the statements made by me.

GERARD C. LORUSSO  
CERTIFICATE

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Commonwealth of Massachusetts  
Plymouth, ss.

I, Judith McGovern Williams, a  
Registered Professional Reporter and  
Notary Public in and for the Commonwealth  
of Massachusetts, do hereby certify:

That GERARD C. LORUSSO, the  
witness whose deposition is hereinbefore  
set forth, was duly sworn by me and that  
such deposition is a true record of the  
testimony given by the said witness.

IN WITNESS WHEREOF, I have  
hereunto set my hand this       day of  
     , 2005.

Judith McGovern Williams  
Registered Professional Reporter  
Certified Realtime Reporter  
Certified LiveNote Reporter  
Certified Shorthand Reporter No. 130993

My Commission expires:  
April 2, 2010

59 (Pages 230 to 231)

— **Exhibit B** —

**Excerpts From The Deposition Of David E. Adams**

1 UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF MASSACHUSETTS  
3  
4

5 \*\*\*\*\*

6 PLAINVILLE GENERATING CO., L.L.C.,

7 Plaintiff

8 vs.

No. 05CV12168 GAO

9 DTE BIOMASS ENERGY, INC. and

10 PLAINVILLE GAS PRODUCERS, INC.,

11 Defendants

12 \*\*\*\*\*

13  
14  
15  
16 VOLUME: I

17 PAGES: 1-200  
18  
19  
20

21 DEPOSITION OF DAVID E. ADAMS

22 TUESDAY, NOVEMBER 8, 2005  
23  
24

Page 2

1 DEPOSITION OF DAVID E. ADAMS, a witness  
 2 called on behalf of the Defendants,  
 3 pursuant to the Federal Rules of Civil  
 4 Procedure, before Judith McGovern  
 5 Williams, Certified Shorthand Reporter  
 6 No. 130993, Registered Professional  
 7 Reporter, Certified Realtime Reporter,  
 8 Certified LiveNote Reporter, and Notary  
 9 Public in and for the Commonwealth of  
 10 Massachusetts, at the offices of Looney &  
 11 Grossman L.L.P., 101 Arch Street, Boston,  
 12 Massachusetts 02110, on Tuesday,  
 13 November 8, 2005, commencing at 9:15 a.m.  
 14  
 15  
 16  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24

Page 3

1 APPEARANCES:  
 2  
 3 LeBOEUF, LAMB, GREENE & MacRAE, L.L.P.  
 4 Steven E. Ferrey, Esquire  
 5 260 Franklin Street  
 6 Boston, Massachusetts 02110-3173  
 7 617-439-9500  
 8 sferrey@lglm.com  
 9 on behalf of the Plaintiff  
 10  
 11 BLACKWELL, SANDERS, PEPER, MARTIN, L.L.P.  
 12 W.C. Blanton, Esquire  
 13 4801 Main Street  
 14 Suite 1000  
 15 Kansas City, Missouri 64112  
 16 816-983-8151  
 17 wblanton@blackwellsanders.com  
 18 - and -  
 19 LOONEY & GROSSMAN L.L.P.  
 20 Wesley S. Chused, Esquire  
 21 101 Arch Street  
 22 Boston, Massachusetts 02110-1112  
 23 617-951-2800  
 24 wchused@lgllp.com

Page 4

1 APPEARANCES (Continued):  
 2  
 3 - and -  
 4 DAVID JOEST, ESQUIRE  
 5 DTE Energy  
 6 425 South Main Street  
 7 Suite 201  
 8 Ann Arbor, Michigan 48104  
 9 734-913-2083  
 10 joestd@dtcs.com  
 11 all on behalf of the Defendants  
 12  
 13  
 14  
 15  
 16  
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 24

Page 5

1 INDEX  
 2 Witness Page  
 3 DAVID E. ADAMS  
 4 Direct Examination by Mr. Blanton 10  
 5  
 6  
 7  
 8  
 9

10 EXHIBITS  
 11 Number Page  
 12  
 13 1 One-page letter dated 13  
 14 November 7, 2005, to Mr. Chused  
 15 from Mr. DeMayo  
 16  
 17 2 One-page letter of transmittal 74  
 18 dated September 20, 2005, to  
 19 Mr. Ferrey from Mr. Adams  
 20  
 21 3 One-page cover sheet entitled 76  
 22 References to Tax Credits and  
 23 attached two pages  
 24

2 (Pages 2 to 5)

Page 6	Page 8
<p>1 4 One-page cover sheet entitled 83</p> <p>2 DTE Biomass Energy References</p> <p>3 and attached 10 pages</p> <p>4</p> <p>5 5 One-page cover sheet entitled 88</p> <p>6 Current Air Pollution Control</p> <p>7 Permit and multipage attachment</p> <p>8</p> <p>9 6 One-page cover sheet entitled 89</p> <p>10 Wellfield Maintenance Records</p> <p>11</p> <p>12 7 One-Page cover sheet entitled 99</p> <p>13 Gas Generation Estimates and</p> <p>14 attached seven pages</p> <p>15</p> <p>16 8 One-page cover sheet entitled 102</p> <p>17 Site Plans and attached plans</p> <p>18</p> <p>19 9 One-page 2004/2005 Correction 108</p> <p>20 Action URS Corp.</p> <p>21</p> <p>22 10 One-page letter dated 108</p> <p>23 November 1, 2004, to Mr. Dakers</p> <p>24 from Mr. Garfield</p>	<p>1 17 Three-page letter dated 109</p> <p>2 June 20, 2005, to Mr. Dakers</p> <p>3 from Messrs. Bellerose and</p> <p>4 Garfield and multipage</p> <p>5 attachments</p> <p>6</p> <p>7 18 Two-page letter dated 110</p> <p>8 July 12, 2005, to Mr. Dakers from</p> <p>9 Messrs. Bellerose and Garfield</p> <p>10 and multipage attachments</p> <p>11</p> <p>12 19 Affidavit of David E. Adams 145</p> <p>13 in Support of Motion for</p> <p>14 Injunction</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>
Page 7	Page 9
<p>1 11 Multipage Corrective Action 108</p> <p>2 Alternatives Analysis</p> <p>3 (Report #1)</p> <p>4</p> <p>5 12 Nine-page letter dated June 18, 109</p> <p>6 2004, to Mr. Larimore from</p> <p>7 Mr. Ellis</p> <p>8</p> <p>9 13 Ten-page letter dated March 21, 109</p> <p>10 2005, to Mr. Larimore from</p> <p>11 Mr. Ellis</p> <p>12</p> <p>13 14 Multipage Major Permit 109</p> <p>14 Modification Report (Report #1)</p> <p>15</p> <p>16 15 Two-page letter dated 109</p> <p>17 June 1, 2005, to Mr. Dakers from</p> <p>18 Mr. Ellis</p> <p>19</p> <p>20 16 Two-page letter dated June 1, 109</p> <p>21 2005, to Mr. Dakers from</p> <p>22 Messrs. Bellerose and Garfield</p> <p>23 and multipage attachments</p> <p>24</p>	<p>1 P R O C E E D I N G S</p> <p>2 - - -</p> <p>3 It is hereby stipulated and</p> <p>4 agreed by and between counsel for the</p> <p>5 respective parties that the witness will</p> <p>6 read and sign the deposition transcript</p> <p>7 before any notary public within 30 days of</p> <p>8 receipt of same. The filing of the</p> <p>9 deposition is waived.</p> <p>10 It is further stipulated and</p> <p>11 agreed that all objections, except as to</p> <p>12 the form of the questions, and motions to</p> <p>13 strike are reserved until the time of</p> <p>14 trial.</p> <p>15 - - -</p> <p>16 MR. BLANTON: Before we begin, a</p> <p>17 couple of preliminary things. Let the</p> <p>18 record show that this deposition is being</p> <p>19 taken by agreement of the parties in</p> <p>20 connection with plaintiff's application</p> <p>21 for preliminary injunction and other</p> <p>22 relief. The parties have agreed that the</p> <p>23 witnesses who are -- that Mr. Adams and</p> <p>24 the other witnesses being produced today</p>

Page 10

1 and the defense witnesses who are being  
2 produced in Ann Arbor next week are being  
3 deposed with the understanding that in the  
4 later course of the litigation in the  
5 normal course of discovery these witnesses  
6 may be redeposed, either as individuals or  
7 as Rule 30(b)(6) designees, whichever the  
8 case might be, and that these depositions  
9 are without prejudice to the other rights  
10 to depose them under the rules.

11 Also before we begin, I think  
12 you took down a statement from Mr. Chused  
13 about the normal stipulations for  
14 depositions in this venue.

15 Is that right, Mr. Ferrey?

16 MR. FERREY: That is correct.

17 Yes. And the witness will take the 30  
18 days to read and sign.

19 MR. BLANTON: Okay.

20 - - -

21 DAVID E. ADAMS, first having  
22 been duly sworn, testified as follows in  
23 answer to direct examination by

24 MR. BLANTON:

Page 11

1 - - -

2 Q. State your name, please.

3 A. David Adams.

4 Q. Have you been deposed before, Mr. Adams?

5 A. I have.

6 Q. How many times?

7 A. I believe three times.

8 Q. Okay. Well, then what I am about to say  
9 and our following colloquy will probably  
10 be old news to you, but as you know, the  
11 court reporter writes down everything that  
12 everyone in the room says during the  
13 course of the deposition. It is extremely  
14 difficult to keep track of what more than  
15 one person is saying, so as we go along, I  
16 will try to not step on any of your  
17 answers, and can you please wait until you  
18 are sure that I am done with my question  
19 before you begin your response?

20 A. Yes.

21 Q. As I am thinking, I tend to trail off, and  
22 my voice gets soft and mumbly, and  
23 sometimes I get lost in my own questions,  
24 so if you do not hear me or you don't

Page 12

1 understand the question, will you please  
2 let me know that so I can rephrase it or  
3 try again?

4 A. Yes.

5 Q. Because the transcript is of what people  
6 say and not what they do, it is important  
7 that you answer questions audibly and not  
8 with hand gestures or head gestures.  
9 Okay?

10 A. Yes.

11 Q. When you answer a yes or no question,  
12 could you please say yes, no, affirmative,  
13 negative, something like that, rather than  
14 um-hmms and uh-huhs, which are easily  
15 confused?

16 A. Yes.

17 Q. Do you have any physical problems that  
18 would interfere with your ability to  
19 understand and accurately answer questions  
20 today?

21 A. No.

22 Q. Are you on any medication that would  
23 affect your ability to testify accurately  
24 and fully today?

Page 13

1 A. No.

2 Q. All right. Then did you bring with you  
3 today your file on your work on behalf of  
4 Plainville Generating Company and/or  
5 Lorusso Corporation or any other entities  
6 represented by Mr. Ferrey?

7 A. Mr. Ferrey brought along this information.

8 Q. Okay. You produced your full file  
9 relating to your work on this case to  
10 Mr. Ferrey earlier?

11 A. Mr. Ferrey and I copied files from the  
12 Massachusetts DEP, and that is essentially  
13 my full file for that case -- for this  
14 case.

15 Q. Okay.

16 (One-page letter dated  
17 November 7, 2005, to Mr. Chused  
18 from Mr. DeMayo marked Exhibit  
19 No. 1 for identification.)

20 MR. BLANTON: And then for the  
21 record, I note that Mr. DeMayo provided  
22 some documents yesterday to Mr. Chused,  
23 and there is a letter going along with  
24 that. It is marked as Exhibit 1. It was

4 (Pages 10 to 13)



Page 70

1 toward another collection well that has  
 2 some degree of vacuum in it?  
 3 A. Some of the factors are the -- well, the  
 4 major factor is the permeability of the  
 5 waste and/or soil and/or cap material that  
 6 would restrict the flow of that gas. The  
 7 less permeable material would be the  
 8 material through which the gas would  
 9 likely flow.  
 10 Q. Earlier you told me a number of things  
 11 that could be occurring at any landfill  
 12 that would account for a reduction in gas  
 13 being delivered to a commercial facility;  
 14 right?  
 15 A. Yes.  
 16 Q. How would you determine whether or not it  
 17 is because of your working hypothesis that  
 18 at Plainville at least a contributing  
 19 factor is inadequate maintenance or repair  
 20 of the collection wells?  
 21 A. Primarily from reports prepared by URS,  
 22 which indicate that as much as half of the  
 23 gas extraction wells are compromised in  
 24 some manner, either through liquid

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1 blockage of the screen portion of the  
 2 wells or in fact breakage or some other  
 3 type of blockage of the wells.  
 4 Q. Assuming that that is -- if one were to  
 5 assume that that is so, that that is at  
 6 least part of why the delivery of gas has  
 7 been reduced since the first of -- roughly  
 8 the first of 2004, how would you go about  
 9 restoring the historical levels of gas  
 10 delivery?  
 11 A. There are several ways in which that could  
 12 be done. One is to install additional  
 13 wells as replacement wells.  
 14 Another way would be to install  
 15 well pumps to pump the liquid out of those  
 16 wells and if necessary based on blockage  
 17 of header or lateral pipe, to replace  
 18 those portions of pipe to allow vacuum to  
 19 be imparted to the entire gas collection  
 20 system.  
 21 Q. What would be the approximate cost of an  
 22 additional well at the Plainville  
 23 Landfill?  
 24 MR. FERREY: If you know.

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1 A. I don't know offhand. One rule of thumb  
 2 that is used is approximately \$100 per  
 3 foot of well installed.  
 4 Q. And what is the --  
 5 A. For simply for the installation of the  
 6 well, not the connection of that system to  
 7 other header pipe or lateral pipe.  
 8 That -- I am sorry -- is in a  
 9 system without a synthetic cap. Costs  
 10 increase significantly with the  
 11 installation of a well through a cap that  
 12 has to then be repaired.  
 13 Q. And what would be the -- you know the  
 14 locations and physical characteristics of  
 15 the wells that URS was describing;  
 16 correct?  
 17 A. I know some of the information about the  
 18 wells from well logs that were included in  
 19 those reports.  
 20 Q. What is the range of depths of the well  
 21 logs that you looked at?  
 22 A. I don't remember specifically, but I would  
 23 say some of the wells may be installed as  
 24 shallow as 20 feet, and some of them may

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1 be as deep as 100 feet or more.  
 2 Q. So for some of the wells, you would be  
 3 talking \$10,000 just to drill -- just to  
 4 put in the well; right?  
 5 A. That's possible.  
 6 Q. And what would be the cost roughly of  
 7 hooking it up to the system?  
 8 MR. FERREY: If you know.  
 9 A. I don't know enough details about how deep  
 10 the header pipe is within the waste, let's  
 11 say, which would dictate the level of  
 12 trenching or other means of connecting the  
 13 well to the vacuum system, so I can't give  
 14 a very -- a reasonably accurate estimate  
 15 of that cost.  
 16 Q. So what is your hand grenades estimate?  
 17 MR. FERREY: Excuse me?  
 18 Q. Roughly? Close enough for hand grenades?  
 19 A. No.  
 20 Q. Any idea?  
 21 A. No.  
 22 Q. Any idea of what it would cost to repair  
 23 the synthetic liner that you would have to  
 24 go through to put in another well?

19 (Pages 70 to 73)



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1 A. It depends. For one particular well, that  
 2 may be several thousand dollars.  
 3 Q. How much would it cost to put well pumps  
 4 in a well that has water in it?  
 5 A. On the order of five to eight thousand  
 6 dollars per well.  
 7 Q. How many wells did you determine appear to  
 8 have some sort of problem at this system?  
 9 A. I didn't determine any.  
 10 Q. I am sorry. Based upon your reading of  
 11 URS's reports?  
 12 A. Approximately half of the 117 wells, so  
 13 somewhere on the order of 50 to 60 wells.  
 14 MR. BLANTON: What time is it?  
 15 THE REPORTER: 10:39.  
 16 MR. BLANTON: Do you need a  
 17 break?  
 18 MR. FERREY: I could use a  
 19 break.  
 20 MR. BLANTON: Okay. Let's take  
 21 five.  
 22 (Recess taken at 10:39 a.m.)  
 23 (Recess ended at 10:46 a.m.)  
 24 (One-page letter of transmittal

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1 dated September 20, 2005, to  
 2 Mr. Ferrey from Mr. Adams  
 3 marked Exhibit No. 2 for  
 4 identification.)  
 5 BY MR. BLANTON:  
 6 Q. Mr. Adams, I show you what has been marked  
 7 as Exhibit 2.  
 8 (Handing Exhibit No. 2 to the  
 9 witness.)  
 10 Q. I ask if this is a transmittal document  
 11 with which you sent some materials to  
 12 Mr. Ferrey.  
 13 (Pause.)  
 14 (The witness viewing Exhibit  
 15 No. 2.)  
 16 A. Yes.  
 17 (Handing Exhibit No. 2 back to  
 18 Mr. Blanton.)  
 19 Q. I am going to show you the documents that  
 20 have been marked as Exhibits 3 through 8.  
 21 I ask you if these are the documents that  
 22 were sent to him by this transmittal  
 23 document.  
 24 THE WITNESS: Can I see that

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1 just so I --  
 2 (Handing Exhibit No. 2 back to  
 3 the witness.)  
 4 MR. FERREY: I will mark our  
 5 copies as I go through here.  
 6 MR. BLANTON: This is my  
 7 assumption, based on the strategic  
 8 placement of the paper clip.  
 9 (Pause.)  
 10 (The witness viewing Exhibits  
 11 Nos. 3 through 8.)  
 12 A. Yes.  
 13 (Handing Exhibit No. 3 to  
 14 Exhibit No. 8 back to Mr. Blanton.)  
 15 (One-page cover sheet entitled  
 16 References to Tax Credits and  
 17 attached two pages marked  
 18 Exhibit No. 3 for  
 19 identification.)  
 20 BY MR. BLANTON:  
 21 Q. Let me show you what has been marked as  
 22 Exhibit 3. Could you tell me first what  
 23 is the -- you have a description on the  
 24 cover sheet; right?

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1 (Handing Exhibit No. 3 to the  
 2 witness.)  
 3 A. Yes.  
 4 Q. What is the document that is attached to  
 5 the cover sheet?  
 6 A. Technical Due Diligence Investigation For  
 7 Landfill Gas Recovery prepared by SCS  
 8 Engineers in August 1996 for Biomass  
 9 Energy Systems.  
 10 Q. Where did you obtain that?  
 11 A. I don't recall if I obtained that from the  
 12 Massachusetts DEP files, but I think more  
 13 than likely I received that from Lorusso  
 14 Corporation through Mr. Ferrey.  
 15 Q. Is that your handwriting on the upper  
 16 right-hand corner of the first page of the  
 17 letter?  
 18 A. Yes.  
 19 Q. Can you read it? Or do you remember it?  
 20 Because my photocopy is not very good.  
 21 A. Yes. I believe I had noted that I  
 22 reviewed the report and made two notes to  
 23 myself, one, indicating that it was no new  
 24 information relative to the draft report

20 (Pages 74 to 77)

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- 1 to the environment?
- 2 A. I don't think I -- I think the -- as I
- 3 stated, the improper operation of the gas
- 4 extraction wells is an explanation for why
- 5 gas is migrating from the landfill.
- 6 Q. Can you think of any other reasons why it
- 7 is based upon the information that is
- 8 available to you?
- 9 A. No.
- 10 Q. Would you look at Exhibit 14, page 7?
- 11 (Handing Exhibit No. 14 to the
- 12 witness.)
- 13 Q. Let me have those others back, before they
- 14 get completely --
- 15 (Handing Exhibits Nos. 11 and 17
- 16 back to Mr. Blanton.)
- 17 Q. The last paragraph before section 3.2, the
- 18 second paragraph of the document, do you
- 19 see the first sentence in that paragraph?
- 20 (Pause.)
- 21 (The witness viewing Exhibit
- 22 No. 14.)
- 23 A. Yes.
- 24 Q. Do you disagree with that statement?

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- 1 A. No.
- 2 Q. If that is true, that is not related to
- 3 improper functioning of the gas collection
- 4 system, is it?
- 5 A. I think it may be related to that in that
- 6 if well pumps were installed in wells,
- 7 liquid level could be dropped below the
- 8 screened portion of that -- of that well,
- 9 and gas could be extracted from the
- 10 landfill.
- 11 Q. When did the water table come up to where
- 12 it was at the time this May of 2005 report
- 13 was issued?
- 14 MR. FERREY: If you can answer.
- 15 A. If you are referring to there are two
- 16 dates by which the water table is
- 17 indicated: on April 6th and April 25th.
- 18 I guess it is 2005.
- 19 Q. Right. So in less than a month, the water
- 20 table varied three and a half feet; right?
- 21 A. Yes.
- 22 Q. And after the water went down the next
- 23 week, the methane went up, the water table
- 24 went down; right?

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- 1 A. Yes.
- 2 Q. Are you suggesting that it is a
- 3 malfunction of the gas collection system
- 4 to not have pumps in when the water table
- 5 fluctuates that much in the course of
- 6 three or four weeks?
- 7 A. I would say in order to extract the gas
- 8 from the gas collection system -- from the
- 9 landfill in those areas, when the water
- 10 table fluctuates to that degree, it would
- 11 be prudent to install well pumps to be
- 12 able to extract that gas.
- 13 Q. Do you have any opinion as to the amount
- 14 of gas that left the landfill through
- 15 preferential gas migration pathways below
- 16 the water table?
- 17 A. No.
- 18 Q. Do you know of any way that one could make
- 19 that determination?
- 20 A. I think it would be very difficult.
- 21 Q. And do you know -- do you have any opinion
- 22 as to the economic value of the gas you
- 23 would collect by putting in pumps to take
- 24 care of this fluctuating water table

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- 1 compared to the cost of pumping the water
- 2 table down?
- 3 A. I'm not familiar with the economics of
- 4 this project.
- 5 Q. And do you know whether the water table
- 6 has ever fluctuated this much before
- 7 April 6th of 2005?
- 8 A. No, I don't.
- 9 Q. Do you know whether any landfill gas left
- 10 the landfill by this pathway before early
- 11 2004 ever?
- 12 A. I do not know.
- 13 Q. Look at Exhibit 18, please.
- 14 (Witness complying.)
- 15 MR. BLANTON: Off the record a
- 16 second.
- 17 (Discussion off the record.)
- 18 BY MR. BLANTON:
- 19 Q. You were saying you thought this was sort
- 20 of the overall summary of the URS workup
- 21 to this point in time?
- 22 A. This work, and then there was a June --
- 23 Q. And the June 20th?
- 24 A. And the June 20th. Yes.

43 (Pages 166 to 169)

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- 1 Q. So in forming your opinions as stated  
2 earlier today and in your affidavit, you  
3 would have relied upon these documents in  
4 large measure?  
5 A. Yes.  
6 Q. Look at the third page of Exhibit 18.  
7 (Witness complying.)  
8 Q. The first paragraph under "Conceptual  
9 Model," read the third sentence out loud.  
10 A. "Based on this information, URS believes  
11 that it is likely that the clay liner that  
12 was placed directly onto the bedrock  
13 surface has been compromised."  
14 Q. And go ahead and read the rest of the next  
15 sentence.  
16 A. "It appears that LFG migration has been  
17 occurring through the clay liner into the  
18 bedrock cracks and fissures."  
19 Q. Go on.  
20 A. Once the LFG has entered the cracks and  
21 fissures, it migrates both horizontally  
22 (in bedrock) and vertically (in bedrock  
23 and overburden sand) through preferred  
24 pathways until the pressure driving the

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- 1 LFG dissipates."  
2 Q. Read the last sentence.  
3 A. "To date, LFG has been detected in gas  
4 probes up to 250 feet east of the landfill  
5 footprint."  
6 Q. Do you have any reason to disagree with  
7 this statement -- these statements by URS?  
8 A. I haven't personally investigated the  
9 subsurface or the stratigraphy of the  
10 site, so I can't comment on that.  
11 Q. Do you have any other explanation for why  
12 you would be detecting gas -- LFG gas and  
13 gas probes up to 250 feet east if it  
14 wasn't getting out of the landfill by  
15 either means that they have suggested?  
16 A. That seems like a likely means for the gas  
17 to migrate from the landfill, assuming  
18 there isn't another source of methane.  
19 Q. The clay liner is not part of the gas  
20 collection system, is it?  
21 A. No.  
22 Q. It is not the purpose of the gas  
23 collection system to seal up cracks and  
24 fissures underneath the compromised clay

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- 1 liner, is it?  
2 A. I think it is the purpose of the gas  
3 collection system to induce a vacuum  
4 within the landfill to draw gas into the  
5 gas collection system.  
6 Q. And you can only put so much vacuum on  
7 those wells without creating fire hazards  
8 and other problems; correct?  
9 A. Judicious adjustment of the wells allows  
10 you to place as much vacuum as feasible in  
11 various areas of the landfill, but, yes,  
12 it is important to keep a review of the  
13 oxygen concentration and temperature.  
14 Q. And depending on the extent to which the  
15 clay liner directly on the bedrock has  
16 been compromised and the gas has access to  
17 cracks and fissures, it may or may not be  
18 possible to keep the gas from leaving  
19 through those cracks and fissures by  
20 putting a vacuum on the wells; correct?  
21 A. I'm not sure that's true, because there  
22 are other means to limit the potential for  
23 oxygen to be entrained into the landfill  
24 such as installing vertical gas wells with

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- 1 perforations only in the bottom third of  
2 the well or bottom half of the well to  
3 limit the potential for oxygen to be drawn  
4 into the landfill and rather to extract  
5 the gas from those deep portions  
6 preferentially.  
7 Q. What would that cost?  
8 A. The same type of costs that are associated  
9 with installing conventional wells.  
10 Q. What is your understanding as to whose  
11 responsibility out of all of these parties  
12 that you have investigated, whose  
13 responsibility was it to have a proper  
14 clay liner at this site?  
15 MR. FERREY: Just note an  
16 objection. Calling for a legal  
17 conclusion.  
18 Q. You can answer.  
19 A. It is not clear to me whose responsibility  
20 that is.  
21 Q. Would you agree in light of the two  
22 documents that we just looked at and the  
23 statements made by URS in those two  
24 documents with which you agreed that there

44 (Pages 170 to 173)

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1 are at least three reasons why or possible  
 2 reasons why LFG has been escaping into the  
 3 environment, that is: malfunctioning  
 4 wells; faulty liner installation; and  
 5 cracks in the bedrock; and at least  
 6 periods of time in which the water table  
 7 has come up so that the gas is going out  
 8 through preferential pathways?  
 9 A. I think those all explain how gas could be  
 10 migrating from the landfill. It is my  
 11 contention that maintenance -- operation  
 12 and maintenance of the gas collection  
 13 system could prevent some, if not all, of  
 14 those pathways or reasons for migration.  
 15 Q. Is it correct you have no knowledge or  
 16 opinion at this point what that would cost  
 17 to control all of these factors by  
 18 additional wells, additional well types,  
 19 additional well auxiliary equipment?  
 20 A. I have not tried to estimate that cost.  
 21 Q. So your opinions -- is it fair to say then  
 22 that your opinion about the role of the  
 23 wells is simply without regard for the  
 24 cost?

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1 A. Correct.  
 2 Q. If one has no financial restraints, you  
 3 can do a lot with the wells; correct?  
 4 A. You sure can.  
 5 Q. If you are in an economic enterprise, some  
 6 of those things may be reasonable and some  
 7 may not; correct?  
 8 A. Spending less money on gas collection  
 9 system modifications could likely have  
 10 less impact than if you were to spend more  
 11 money.  
 12 Q. And it may well take a lot more money to  
 13 catch every bit of the gas than the  
 14 economic value of the gas you are catching  
 15 as a result of those efforts; correct?  
 16 A. I think that is a possibility, but I'm not  
 17 familiar with the economics for this  
 18 project.  
 19 Q. In paragraph 7 of your affidavit on  
 20 page 5, the first full paragraph, it  
 21 begins: "The apparent deterioration"; do  
 22 you see that?  
 23 A. Yes.  
 24 Q. In the second sentence of that paragraph,

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1 please tell me what is the reasonably  
 2 expected maintenance and repair of the  
 3 system that did not take place, and be  
 4 very specific, as specific as you can.  
 5 A. Based on information included in several  
 6 of URS's reports, there appears to be  
 7 significant amounts of liquid in many of  
 8 the wells at the site. I believe it would  
 9 have been wise and be considered  
 10 reasonably expected maintenance to install  
 11 liquid well pumps to remove some of that  
 12 liquid to improve the gas extraction  
 13 efficiency.  
 14 It may also be considered  
 15 reasonable maintenance to install  
 16 replacement wells, particularly in cases  
 17 where there is gas migration from the  
 18 site.  
 19 Q. Anything else?  
 20 A. No. I think those are the two major  
 21 reasonably expected maintenance items.  
 22 Q. And as I recall, the well pumps you think  
 23 would cost at least \$5,000 and as much as  
 24 \$8,000 per well; correct?

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1 A. Yes.  
 2 Q. And the replacement wells would have been  
 3 approximately \$10,000 for the well,  
 4 several thousand dollars to repair the  
 5 liner after putting in the new well, and  
 6 some unknown amount to connect the new  
 7 well to the collection system; correct?  
 8 A. The only question is on -- those numbers I  
 9 believe are accurate with the exception  
 10 that some wells may be less expensive to  
 11 install if they were shallower than  
 12 100 feet.  
 13 Q. So the shortest ones would have been  
 14 \$2,000? Two to ten thousand dollars per  
 15 well plus several thousand dollars for the  
 16 liner, several thousand dollars to repair  
 17 the liner, plus some other amount to  
 18 connect them to the collection system?  
 19 A. Correct.  
 20 Q. And tell me how much more gas would have  
 21 been collected had that been done.  
 22 A. I can't tell you that, but I can tell you  
 23 the collection rate earlier on in the  
 24 history of the project based on some of

45 (Pages 174 to 177)



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1 the information that was included in these  
 2 reports.  
 3 Q. So the best case would have been  
 4 20 percent more, correct, --  
 5 A. No.  
 6 Q. -- based upon your chart in --  
 7 A. 20 percent more just for that time period,  
 8 but a closer look on historical gas  
 9 collection rates early on, I believe there  
 10 was even more gas generated -- collected  
 11 years earlier. While it is true that the  
 12 gas would typically decline over time, the  
 13 rate of decline has -- that has been  
 14 documented is quite a bit more significant  
 15 than what has been represented in models  
 16 prepared by others and what is commonly  
 17 expected at sites.  
 18 Q. And you still concur with the statement in  
 19 one of these reports that actual  
 20 generation of gas can vary substantially  
 21 from the predicted models?  
 22 A. Yes.  
 23 Q. And you still stand by your original  
 24 statement from your original testimony

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1 that the decrease in the amount of gas  
 2 delivered in addition to the decrease due  
 3 to bad maintenance and bad repair could  
 4 also be in part due to decreased  
 5 generation of gas in the first place?  
 6 A. Yes.  
 7 Q. And the other factors you talked about?  
 8 A. Correct.  
 9 Q. Okay. And it is correct that you cannot  
 10 quantify the extent to which any of these  
 11 factors contribute to the observed  
 12 decrease in gas delivery; is that correct?  
 13 A. That's correct.  
 14 Q. And you can't quantify the extent to which  
 15 the escape of gas from the landfill due to  
 16 poor maintenance of the collection system  
 17 is due to that as compared to the other  
 18 factors; correct?  
 19 A. Correct.  
 20 Q. And you have no opinion as to the cost of  
 21 putting the gas collection system in a  
 22 state of perfect function at every well  
 23 compared to the value of the gas being  
 24 collected as a result of that expenditure;

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1 correct?  
 2 A. Correct.  
 3 Q. Now in the bottom of page 5 of your  
 4 affidavit -- excuse me -- the next to last  
 5 paragraph, it says your opinion is that  
 6 reasonably expected maintenance could have  
 7 improved the collection efficiency so that  
 8 sufficient quantifies of LFG could  
 9 currently be delivered to operate the  
 10 seven engine/generator sets.  
 11 A. Yes.  
 12 Q. What do you base that on?  
 13 A. Based on the fact that gas being delivered  
 14 to the facility now is decreased to the  
 15 point where there is less than a couple  
 16 hundred cubic feet per minute of gas shy  
 17 of what would be required to operate the  
 18 facility at full capacity, and my  
 19 experience is based on how much gas has  
 20 been documented to be delivered to the  
 21 facility in the past and the rapid decline  
 22 of gas delivered to the facility over the  
 23 past several years, that it is likely that  
 24 that quantity of gas could be captured

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1 through proper maintenance of the gas  
 2 collection system.  
 3 Q. Without regard for cost?  
 4 Before you answer that, can you  
 5 please convert the 200 cubic feet of gas  
 6 that you were just talking about to the  
 7 millions of BTUs per day that is in your  
 8 chart in paragraph 3?  
 9 A. Sure. Assuming the gas is -- the  
 10 concentration of methane in the gas is  
 11 approximately 50 percent, 1,000 cubic feet  
 12 per minute represents 700 million BTUs per  
 13 day. Therefore, a quick calculation in my  
 14 head, 200 CFM represents approximately  
 15 140 million BTUs per day.  
 16 Q. There are still a number of factors that  
 17 can explain the total decreased delivery  
 18 of BTUs to the generating plant; correct?  
 19 A. Yes.  
 20 Q. And you still can't calculate how much of  
 21 the total decrease is due to any of the  
 22 factors; correct?  
 23 A. Correct.  
 24 Q. But you just have a feeling that you could

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# CERTIFICATE

Commonwealth of Massachusetts  
Plymouth, ss.

I, Judith McGovern Williams, a  
Registered Professional Reporter and  
Notary Public in and for the Commonwealth  
of Massachusetts, do hereby certify:

That DAVID E. ADAMS, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by the said witness.

IN WITNESS WHEREOF, I have  
hereunto set my hand this            day of  
                , 2005.

Judith McGovern Williams  
Registered Professional Reporter  
Certified Realtime Reporter  
Certified LiveNote Reporter  
Certified Shorthand Reporter No. 130993

My Commission expires:  
April 2, 2010

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CASE: PLAINVILLE GENERATING CO., L.L.C.  
VS. DTE BIOMASS ENERGY, INC. and  
PLAINVILLE GAS PRODUCERS, INC.

## ERRATA SHEET

**INSTRUCTIONS:** After reading the transcript of your deposition, note any change or correction to your testimony and the reason therefor on this sheet. DO NOT make any marks or notations on the transcript volume itself. Sign and date this errata sheet (before a Notary Public, if required). Refer to Page 198 of the instruction for errata sheet distribution instructions.

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I have read the foregoing transcript of my testimony, and except for any corrections or changes noted above, I hereby subscribe to the transcript as an accurate record of the statements made by me.

DAVID E. ADAMS

— **Exhibit C** —

**Excerpts From The Deposition Of David LaFlamme**



1 UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF MASSACHUSETTS  
3  
4

5 \*\*\*\*\*

6 PLAINVILLE GENERATING CO., L.L.C.,

7 Plaintiff

8 vs. No. 05CV12168 GAO

9 DTE BIOMASS ENERGY, INC. and

10 PLAINVILLE GAS PRODUCERS, INC.,

11 Defendants

12 \*\*\*\*\*

13  
14  
15  
16 VOLUME: I

17 PAGES: 1-184  
18  
19  
20

21 DEPOSITION OF DAVID J. LaFLAMME

22 THURSDAY, NOVEMBER 10, 2005  
23  
24

<p style="text-align: right;">Page 2</p> <p>1 DEPOSITION OF DAVID J. LaFLAMME, a witness  2 called on behalf of the Defendants,  3 pursuant to Federal Rules of Civil  4 Procedure, before Judith McGovern  5 Williams, Certified Shorthand Reporter  6 No. 130993, Registered Professional  7 Reporter, Certified Realtime Reporter,  8 Certified LiveNote Reporter, and Notary  9 Public in and for the Commonwealth of  10 Massachusetts, at the offices of Looney &amp;  11 Grossman L.L.P., 101 Arch Street, Boston,  12 Massachusetts 02110, on Thursday,  13 November 10, 2005, commencing at 1:20 p.m.  14  15  16  17  18  19  20  21  22  23  24</p>	<p style="text-align: right;">Page 4</p> <p style="text-align: center;">I N D E X</p> <p>2 Witness Page  3 DAVID J. LaFLAMME  4 Direct Examination by Mr. Blanton 6  5  6  7  8  9 E X H I B I T S  10 Number Page  11  12 64 One-page note dated 11/9/05 101  13 to Mr. Chused from  14 Mr. Ferrey  15  16 65 Four-page letter dated 101  17 May 26, 2005, to Mr. Ferrey  18 from Mr. Adams  19  20 66 Multipage schematics 102  21  22 67 Plan 51  23  24 68 Multipage Operations Manual 104</p>
<p style="text-align: right;">Page 3</p> <p>1 APPEARANCES:  2 LeBOEUF, LAMB, GREENE &amp; MacRAE, L.L.P.  3 Steven E. Ferrey, Esquire  4 260 Franklin Street  5 Boston, Massachusetts 02110-3173  6 617-439-9500  7 sferrey@llgm.com  8 on behalf of the Plaintiff  9  10 BLACKWELL, SANDERS, PEPER, MARTIN, L.L.P.  11 W.C. Blanton, Esquire  12 4801 Main Street  13 Suite 1000  14 Kansas City, Missouri 64112  15 816-983-8151  16 wblanton@blackwellsanders.com  17 - and -  18 LOONEY &amp; GROSSMAN L.L.P.  19 Wesley S. Chused, Esquire  20 101 Arch Street  21 Boston, Massachusetts 02110-1112  22 617-951-2800  23 wchused@lgllp.com  24 both on behalf of the Defendants</p>	<p style="text-align: right;">Page 5</p> <p>1 69 Multipage Project Report 104  2  3 70 2002 Modifications Process 106  4 and Instrumentation Diagram  5  6 71 2002 Modifications Process 107  7 and Instrumentation Diagram  8  9 72 Group of documents, first 111  10 page Check No. 001958  11  12  13  14  15  16  17  18  19  20  21  22  23  24</p>

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## PROCEEDINGS

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It is hereby stipulated and agreed by and between counsel for the respective parties that the witness will read and sign the deposition transcript before any notary public within 30 days of receipt of same. The filing of the deposition is waived.

It is further stipulated and agreed that all objections, except as to the form of the questions, and motions to strike are reserved until the time of trial.

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DAVID J. LaFLAMME, first having been duly sworn, testified as follows in answer to direct examination by MR. BLANTON:

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Q. Mr. LaFlamme, as you know I am W. C. Blanton. I represent the defendants in the lawsuit that Plainville Generating Company brought in District Court here

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against DTE Biomass Energy, Inc. and Plainville Gas Producers, Inc.

Are you familiar with that litigation generally?

A. I know of it, yes.

Q. Have you ever been deposed before?

A. Have I ever been?

Q. Have you ever been deposed before?

A. Yes.

Q. You have given a deposition?

A. Yes.

Q. How many times?

A. Once.

Q. And what was involved in that case?

A. It was an industrial accident.

Q. Then you're familiar generally with the process. The reporter writes down everything everyone says. So it is important that only one person speak at a time. My questions tend to get long, so be sure I am done before you start your answer, and make sure I don't step on your answer. Okay?

A. Um-hmm.

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Q. The next one is you do have to answer audibly. Head gestures and hand gestures --

A. Right.

Q. -- don't pick up.

A. All right.

Q. So you do have to say them audibly. All right?

A. Yes.

Q. And um-hmms, like you just did --

A. Yes.

Q. -- are ambiguous.

A. Okay.

Q. If you could do yeses and noes, that would be helpful.

Is there any medical or physical reason that you have difficulty either understanding questions or being able to respond or recall things today?

A. As long as it is audible, because I do have a hearing problem, slight.

Q. Sometimes I trail off, and sometimes I mumble.

A. Okay.

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Q. So if you can't tell what I am trying to find out, please let me know. Don't guess. All right?

A. Okay.

Q. Okay.

MR. BLANTON: Could we go off the record?

(Discussion off the record.)

BY MR. BLANTON:

Q. Mr. LaFlamme, could you tell me what your general educational background is?

A. My only formal education is high school.

Q. And did you go to school in this area?

A. Needham, the town of Needham.

Q. Okay.

A. Massachusetts.

Q. And after high school, what did you do?

A. I worked.

Q. And where did you first work full time after high school?

A. A place in Somerville called Cox Engineering. It was a sheet metal, ventilation, air conditioning type, fabrication shop.

3 (Pages 6 to 9)

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- 1 landfills worked?
- 2 A. I did nothing at that time about learning
- 3 about the landfill, because I had no -- I
- 4 had no connection with that other than to
- 5 take the gas that came out of the pipe on
- 6 our property.
- 7 Q. So as of the 1996 beginning of the
- 8 relationship between the DTE/Plainville
- 9 Gas Producers and the Lorusso entities,
- 10 your job started at the intake pipe at the
- 11 asphalt plant roughly?
- 12 A. Correct.
- 13 Q. Okay. How did it work, getting -- fueling
- 14 the asphalt plant with gas from the
- 15 landfill?
- 16 A. At first there were a lot of problems for
- 17 -- for DTE to supply us with gas. It
- 18 wound up requiring that they had to turn
- 19 the line pressure up to between 14 and 15
- 20 psi to supply adequate gas to the burners.
- 21 Q. How does the line pressure -- how is that
- 22 created and adjusted, regulated?
- 23 A. It is created and regulated by positive
- 24 displacement blowers that were installed

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- 1 at the landfill in the flare station.
- 2 Q. Had there been any such blowers there
- 3 before the hookup to the asphalt plant?
- 4 A. Not of that type. There were centrifugal
- 5 blowers for the flares.
- 6 Q. Who made the decisions about what sort of
- 7 blowers to put there to deliver the gas to
- 8 the asphalt plant?
- 9 A. DTE.
- 10 Q. Did, if you know, did any of the Lorusso
- 11 entities have to bear any of the cost of
- 12 those --
- 13 A. No.
- 14 Q. -- modifications?
- 15 A. Did not to my knowledge.
- 16 Q. What was there about the delivery of
- 17 methane to the asphalt plant that required
- 18 the pressure to go up? How much pressure
- 19 did you require and why?
- 20 A. It was I'm going to say at a mean average
- 21 of 14 and a half psi.
- 22 Q. That's what you needed to make your
- 23 burners work?
- 24 A. Of gas. Correct.

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- 1 Q. Okay. And they were having trouble doing
- 2 that, getting it?
- 3 A. At first, yes.
- 4 Q. How long did that last that there were
- 5 problems?
- 6 A. I'm going to say a month and a half, two
- 7 months, something along that line.
- 8 Q. Who did you work with on the other side?
- 9 A. Rick Jasack.
- 10 Q. Anybody else?
- 11 A. I mean there were other people around, but
- 12 I don't remember who.
- 13 Q. Do you know what the fix was?
- 14 A. Yes. They -- they did something to the
- 15 blowers to turn them up.
- 16 Q. But you weren't involved in any technical
- 17 discussions --
- 18 A. No.
- 19 Q. -- about how to do that?
- 20 A. No.
- 21 Q. Did you have an understanding as to
- 22 whether they had to modify the equipment
- 23 in any way or whether they just had to
- 24 turn it up?

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- 1 A. I don't -- I can't actually explain to you
- 2 what they did, but they did increase the
- 3 pressure.
- 4 Q. Okay. After that, how did it go with the
- 5 asphalt plant?
- 6 A. Pretty good.
- 7 Q. Until the asphalt plant went out of
- 8 operation, generally that 1996 to 2001
- 9 period it was okay?
- 10 A. Yes. When the plants were sold, Aggregate
- 11 Industries opted at that time not to use
- 12 landfill gas.
- 13 Q. Was the sale of the asphalt plants a
- 14 consequence of the decision to build an
- 15 electric-generating plant or the
- 16 motivation for building the electric-
- 17 generating plant if you know?
- 18 A. The electric-generating plant was
- 19 something that was going to be built all
- 20 along. We had been in discussions about
- 21 that, "we" meaning people within our
- 22 company, and consulting with Biomass or
- 23 DTE people. That had been in discussion
- 24 for quite some time.

11 (Pages 38 to 41)

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1 two.  
 2 MR. BLANTON: Okay.  
 3 BY MR. BLANTON:  
 4 Q. Tell me what caused -- okay. Tell me what  
 5 causes the condensate, where was the  
 6 condensate appearing, and how did that  
 7 affect you?  
 8 A. In the piping underneath the landfill.  
 9 Q. Generally through the piping?  
 10 A. Correct.  
 11 Q. So the general condensation process was  
 12 blocking the delivery lines; correct?  
 13 That's what Mr. Lorusso told me, I think.  
 14 A. The lack of removing the condensation from  
 15 the piping would fill the pipes with  
 16 water, and, therefore, gas couldn't get  
 17 through.  
 18 Q. How often did that happen after May of  
 19 2003?  
 20 A. Periodically through August, September.  
 21 Q. 2003?  
 22 A. Correct.  
 23 Q. What was the fix, if you know, for the  
 24 system shutting you down automatically

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1 those first couple of months? Did you  
 2 ever find out what was causing that?  
 3 A. It was the computer that was causing it.  
 4 I don't know what would tell the computer  
 5 to shut the gas off, but it would shut the  
 6 gas off. It would tell the valve to  
 7 close.  
 8 Q. Somebody disconnected the computer from --  
 9 A. They disconnected it from the valve  
 10 completely.  
 11 Q. You know that?  
 12 A. Yes.  
 13 Q. Who did it and how do you know?  
 14 A. Jim Van Hoy or they had an electrical  
 15 engineer Russ Grimes.  
 16 Q. And did they --  
 17 A. They disconnected it so it had no control  
 18 over the valve until they made some  
 19 changes in the logic of the computer  
 20 system.  
 21 Q. Was the condensate situation fixed --  
 22 improved or solved?  
 23 A. Not by that change, no.  
 24 Q. I understand that. But was there a fix

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1 for that later?  
 2 A. Yes.  
 3 Q. Do you know what was done to fix that?  
 4 A. I know that they wound up replacing pumps  
 5 or something out there. I don't know  
 6 specifically. But they did make some  
 7 correction on the landfill.  
 8 Q. During the time that -- between May and  
 9 September of 2003, how many times were you  
 10 shut down because of condensate blockage?  
 11 A. I would be guessing if I -- if I gave you  
 12 a number. It was quite a few times.  
 13 Q. More than a dozen?  
 14 A. Yes.  
 15 Q. More than 20?  
 16 A. Maybe not.  
 17 Q. How long would you be down when that  
 18 happened?  
 19 A. Sometimes you would be down 20 minutes.  
 20 Sometimes you would be down an hour.  
 21 Q. Okay.  
 22 MR. BLANTON: All right. Let's  
 23 take a break.  
 24 (Recess taken at 2:56 p.m.)

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1 (Recess ended at 4:09 p.m.)  
 2 MR. BLANTON: A couple of things  
 3 that should have been preliminary but now  
 4 are mid course deviations, Mr. Ferrey.  
 5 Are you agreeable that the same ground  
 6 rules and stipulations for this deposition  
 7 are the same as we agreed to yesterday for  
 8 those of Mr. Adams and Mr. Lorusso?  
 9 MR. FERREY: I am, Mr. Blanton.  
 10 MR. BLANTON: All right.  
 11 (One-page note dated 11/9/05 to  
 12 Mr. Chused from Mr. Ferrey  
 13 marked Exhibit No. 64 for  
 14 identification.)  
 15 MR. BLANTON: And then following  
 16 up with Mr. Adams, I have marked for the  
 17 record as Exhibit 64 a copy of your note  
 18 of yesterday to Mr. Chused transmitting  
 19 Mr. Adams' preliminary opinion letter.  
 20 (Four-page letter dated May 26,  
 21 2005, to Mr. Ferrey from  
 22 Mr. Adams marked Exhibit No. 65  
 23 for identification.)  
 24 MR. BLANTON: And I have marked

26 (Pages 98 to 101)



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1 A. He is the electrician.  
 2 Q. Is he assigned to the generating plant?  
 3 A. No.  
 4 Q. Who is he assigned to?  
 5 A. I believe he is assigned to Lorusso  
 6 Materials.  
 7 Q. Has he worked on a regular basis at the  
 8 generating plant?  
 9 A. On and off. He has not -- he is not  
 10 100 percent full time there. When we  
 11 require his services, he comes in and  
 12 helps.  
 13 Q. Has he done any services on behalf of  
 14 Lorusso Corp. or for Plainville Gas  
 15 Producers at the flare station?  
 16 A. Yes, he has.  
 17 Q. Can you describe generally what he has  
 18 done?  
 19 A. He was involved at the latter part of the  
 20 project, completing the flare station  
 21 electrical work.  
 22 Q. Do you know whether in the course of that  
 23 work he developed an understanding of the  
 24 operation of the flare station?

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1 A. Oh, he may well have. He was intricately  
 2 involved in it.  
 3 Q. Did you have any involvement in -- do you  
 4 know what the -- was he doing that work  
 5 for Lorusso Corporation, or was he doing  
 6 it for DTE or Plainville Gas Producers, or  
 7 do you know what the arrangement was by  
 8 which he did that work?  
 9 MR. FERREY: If you know.  
 10 A. He -- he was working -- he was providing  
 11 service for DTE --  
 12 Q. Okay.  
 13 A. -- and being paid by Lorusso.  
 14 Q. And do you know whether DTE or Plainville  
 15 Gas Producers reimbursed Lorusso --  
 16 A. No.  
 17 Q. -- for his services?  
 18 A. No, not to my knowledge. No.  
 19 (Group of documents, first page  
 20 Check No. 001958 marked Exhibit  
 21 No. 72 for identification.)  
 22 BY MR. BLANTON:  
 23 Q. I am going to show you what I have marked  
 24 as 72, which I understand relates to

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1 reimbursement for services of Mr. Lincoln.  
 2 I want to know whether you have seen this  
 3 information.  
 4 A. Oh, this is after it was built.  
 5 Q. Okay.  
 6 A. This is for maintenance. This is a  
 7 maintenance contract that they had.  
 8 Q. Tell me about that.  
 9 MR. FERREY: Do you have a copy  
 10 of that for me?  
 11 MR. BLANTON: It is on the  
 12 bottom of your stack.  
 13 MR. FERREY: Okay.  
 14 MR. BLANTON: It is underneath  
 15 volume 2 of the operations manual, I  
 16 think.  
 17 A. They had to have a Massachusetts licensed  
 18 electrician to perform services,  
 19 maintenance or what have you, at their  
 20 facility.  
 21 Q. Okay. And --  
 22 A. And they requested us to provide George  
 23 Lincoln, and we agreed when they needed --  
 24 when they needed an electrician over there

Page 113

1 that we would do so. So, hence, George  
 2 Lincoln went and pulled maintenance  
 3 permits for the facility under his name  
 4 and license.  
 5 Q. Okay.  
 6 A. Yes, but that was well after the facility  
 7 was built.  
 8 Q. Did he continue to provide maintenance  
 9 services for Plainville Gas Producers up  
 10 through August 31, 2005?  
 11 A. No.  
 12 Q. When did he stop?  
 13 A. I don't exactly remember when he stopped.  
 14 Q. Do you know why he stopped?  
 15 A. They no longer wanted to pay for the  
 16 service.  
 17 Q. Okay. Do you know whether there was  
 18 anything in particular that prompted that  
 19 decision?  
 20 A. No, I don't.  
 21 Q. Okay. When did you learn that the  
 22 contract between Plainville Gas Producers  
 23 and Allied Waste Systems for the right to  
 24 collect the landfill gas was being

29 (Pages 110 to 113)

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1 assigned to Lorusso Corp.?  
 2 MR. FERREY: If you know.  
 3 A. I want to say the mid to latter part of  
 4 August.  
 5 Q. And did you understand, were you told that  
 6 you were going to -- that the Lorusso  
 7 Corp. would be responsible -- was taking  
 8 over the gas collection and delivery  
 9 system as of September 1?  
 10 A. Yes.  
 11 Q. Were you given any responsibilities in  
 12 connection with that transition?  
 13 A. With the transition?  
 14 Q. Yes.  
 15 A. No.  
 16 Q. Were you asked to in any way assume  
 17 operation responsibilities for the gas  
 18 collection and delivery system?  
 19 A. Yes.  
 20 Q. When?  
 21 A. After -- as of September 1.  
 22 Q. Well, were you -- what were you asked to  
 23 do and what have you done since  
 24 September 1?

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1 A. Go out and try to assess what needs to be  
 2 done on the hill to correct the problems.  
 3 Q. And what have you done in that regard so  
 4 far?  
 5 A. I'm trying to acquire information.  
 6 Physically we haven't done a lot.  
 7 Q. Have you done anything physically since  
 8 September 1?  
 9 A. Other than hire a -- other than hire an  
 10 environmental firm to monitor and tune the  
 11 wellfield, we have only done a couple of  
 12 small items.  
 13 Q. Who is that company?  
 14 A. Shaw Group.  
 15 Q. Who is the person there who has been  
 16 responsible for assisting Lorusso Corp.?  
 17 A. Dan Leahy.  
 18 Q. L-E-A-H-Y?  
 19 A. Yes.  
 20 Q. Do you know his phone number by any  
 21 chance?  
 22 A. No.  
 23 Q. Is --  
 24 A. Well, a cell phone.

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1 Q. The wonders of modern technology. There  
 2 goes the old I will have to look that up  
 3 that and get back to you.  
 4 A. 401-341-0384.  
 5 Q. Where is that? Where is he based?  
 6 A. Rhode Island.  
 7 Q. Okay.  
 8 A. That's all I know.  
 9 Q. Are they doing monitoring work at the  
 10 landfill on a regular basis?  
 11 A. Yes.  
 12 Q. Do they generate written reports of any  
 13 sort?  
 14 A. Yes.  
 15 Q. Do you have access to those -- well, do  
 16 they come to you or do they come to  
 17 someone else?  
 18 A. I get them once a month. They give their  
 19 weekly reports to their supervisor at Shaw  
 20 who puts all of the information together  
 21 and gives me a report once a month.  
 22 Q. So at this point, this falls into the  
 23 category of project other than operations?  
 24 This is your -- are you the person at

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1 Lorusso who is responsible for getting  
 2 this transition implemented --  
 3 A. Yes.  
 4 Q. -- at least initially?  
 5 A. (The witness nodding his head.)  
 6 Q. That was a yes?  
 7 A. Yes. That was a yes.  
 8 Q. The "yes" came before I finished.  
 9 A. Sorry.  
 10 Q. I wanted to make sure it was still yes  
 11 after I got that.  
 12 Do you know what Shaw Group has  
 13 done in terms of tuning the landfill?  
 14 A. They are charged with -- they have to  
 15 visit every well or -- every well in the  
 16 course of a month, so they do X amount of  
 17 wells per week. They come usually one day  
 18 a week. They do X amount of wells. So  
 19 that by the end of the month, they have  
 20 covered the entire wellfield.  
 21 Q. And do they do written reports -- what is  
 22 involved in the tuning process?  
 23 A. They go to each well with an instrument,  
 24 take measurements, and either adjust or

30 (Pages 114 to 117)



Page 118

1 don't adjust, depending on the flow and  
 2 the gas quality and temperature.  
 3 Q. Do they provide -- do they make a written  
 4 record of what they have done?  
 5 A. Yes.  
 6 Q. And is that provided to you also?  
 7 A. Monthly.  
 8 Q. That is part of the report that comes to  
 9 you?  
 10 A. Correct.  
 11 Q. Are there other folks with Lorusso who are  
 12 working with you to implement the  
 13 transition?  
 14 A. Only when I request additional help.  
 15 Q. And that is on a specific task basis?  
 16 A. Right.  
 17 Q. Who have you called upon to do specific  
 18 things?  
 19 A. George Lincoln has been out there with me.  
 20 Q. Doing electrical work?  
 21 A. No.  
 22 Q. What does he do?  
 23 A. He -- he was working with me on some  
 24 piping systems blocking up, setting

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1 surface lines that were not pitched  
 2 properly at the correct pitch so they  
 3 drain.  
 4 Q. Anything else?  
 5 A. Not that I can think of at this time.  
 6 Q. When you say "piping systems blocked," are  
 7 you talking about the vertical wells or  
 8 the laterals?  
 9 A. Lateral lines that are temporary lines,  
 10 repair lines, whatever they are, on the  
 11 surface above grade on the landfill.  
 12 Q. So that would be above the liner?  
 13 A. Oh, yes.  
 14 Q. And so are these the lines also that -- so  
 15 those, the ones that were blocked, would  
 16 be aboveground?  
 17 A. No.  
 18 Q. Or above the -- excuse me -- above the  
 19 liner?  
 20 A. No.  
 21 Q. Where --  
 22 A. They are above and below.  
 23 Q. Have you had to breach the liner to do any  
 24 of this work?

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1 A. No.  
 2 Q. How do you deal with things that are below  
 3 the liner?  
 4 A. I don't. Allied does.  
 5 Q. Okay. Who are you -- in terms of working  
 6 with Allied, could you explain to me  
 7 generally how the transition process has  
 8 gone, not qualitatively what do you think  
 9 of it, but what do you think of Allied in  
 10 taking over?  
 11 A. We have had a couple of meetings, general  
 12 meetings, to discuss conditions on the  
 13 landfill and what everybody expects, and I  
 14 -- I confer with Ralph Larimore, who is  
 15 the area manager for Allied.  
 16 Q. Have the meetings been -- where they have  
 17 taken place?  
 18 A. At the landfill.  
 19 Q. And how many do you remember there being  
 20 there?  
 21 A. I believe so far we have had three.  
 22 Q. And do you remember when they were?  
 23 A. Not exactly.  
 24 Q. Can you tell me in as much detail as you

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1 can recall what subjects you addressed?  
 2 A. We have requested information on  
 3 maintenance logs and what have you from --  
 4 from Allied, which they have not been able  
 5 to provide. We kind of discussed with  
 6 them what they expect, asked what, if any,  
 7 issues were outstanding that needed to be  
 8 addressed. They have given us a couple,  
 9 but no great amount.  
 10 Q. What are the issues that they say need to  
 11 be addressed?  
 12 A. Well, the one outstanding was the  
 13 shimmying of these pipes so they drain  
 14 properly. They claimed that Biomass or  
 15 DTE never did.  
 16 Q. And so this is basically just setting the  
 17 pitch, which direction things are flowing?  
 18 A. Correct.  
 19 Q. Do you have like long lines that are  
 20 pitched the wrong way, or do you have them  
 21 running into each other, or what is the  
 22 situation?  
 23 A. There are some long lines. It can be as  
 24 much as maybe 150, 200 feet. There are

31 (Pages 118 to 121)

Page 122

1 some short lines. There are all different  
 2 kinds of lines up there.  
 3 Q. Any other issues?  
 4 A. Other than -- other than the routine --  
 5 they haven't brought any others to my  
 6 attention. I have asked for a list, but I  
 7 haven't received it yet.  
 8 Q. Okay. What other things have come up at  
 9 the meetings?  
 10 A. They just generally ask how things are  
 11 going. They get their monthly reports.  
 12 They seem to be satisfied.  
 13 Q. Do you make monthly reports to Allied --  
 14 A. I --  
 15 Q. -- or do the Shaw reports go to them  
 16 directly?  
 17 A. Well, I give them the Shaw report, as well  
 18 as I keep a copy, and I give them the copy  
 19 of the monthly download from the gas  
 20 analyzer.  
 21 Q. When you said they haven't been able to  
 22 provide maintenance logs, is this -- to  
 23 your understanding this is they don't have  
 24 them or they just haven't given them to

Page 123

1 you?  
 2 A. I honestly don't know which it is.  
 3 Q. All right.  
 4 A. I know that I haven't received any.  
 5 Q. Do you know when you asked for them?  
 6 A. We asked -- one of the meetings we had was  
 7 the last week in August. I don't remember  
 8 the day. That was the first -- actually  
 9 the first time we asked for them was a  
 10 conference call before any of these  
 11 meetings.  
 12 Q. Okay. And that would have been in August?  
 13 A. Yes.  
 14 Q. And then you had a meeting in late August?  
 15 A. We had a meeting the last week of August.  
 16 It was just before September 1st. We  
 17 actually had a face-to-face meeting at the  
 18 landfill.  
 19 Q. Who was present besides Mr. Larimore and  
 20 you?  
 21 A. Henry Grilli; Henry LaDuke, Nicky -- the  
 22 name begins with the a W, and I'm not  
 23 going to remember, because it is about as  
 24 long as this table; and Brian Card. I

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1 think that was all.  
 2 Q. Who is Henry LaDuke? Is that an Allied  
 3 person?  
 4 A. Yes.  
 5 Q. What is his role?  
 6 A. He is the site attendant. I don't know  
 7 what his official title is, but.  
 8 Q. He is there all the time?  
 9 A. He is there all the time.  
 10 Q. And Nicky W.?  
 11 A. She takes care of their environmental  
 12 work. She does -- she is -- she is -- I  
 13 believe she is from the New York office,  
 14 but I'm not positive about that.  
 15 Q. And Brian Card is?  
 16 A. He is the area engineer, and I believe he  
 17 is based in Rhode Island somewhere.  
 18 Q. And he is an Allied person, too?  
 19 A. Yes.  
 20 Q. Okay. Then you said there were two other  
 21 meetings, one at the end of August, and  
 22 then what?  
 23 A. One -- we had a meeting with, Henry and I  
 24 -- Henry Grilli, and myself, Henry LaDuke

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1 and Brian Card.  
 2 Q. Okay. So everybody except Nicky?  
 3 A. Ralph was not at that meeting.  
 4 Q. Ralph wasn't there?  
 5 A. No. Nicky wasn't at that meeting. No.  
 6 Q. And when was this approximately?  
 7 A. Towards the end of September.  
 8 Q. And what was the subject of that meeting?  
 9 A. Just to check in with each other and see  
 10 how things were going, to see if anybody  
 11 had any comments or anything to add. It  
 12 was a relatively short meeting.  
 13 Q. And then the third meeting?  
 14 A. I believe that was also with just Brian  
 15 Card and Henry LaDuke.  
 16 Q. And what was the subject of that one?  
 17 A. Just another basic check-in.  
 18 Q. You and Mr. Grilli together again?  
 19 A. Yes.  
 20 Q. Since the beginning on September 1, 2005,  
 21 has the movement of gas from the landfill  
 22 to the generating station continued  
 23 without interruption?  
 24 A. Yes.

32 (Pages 122 to 125)

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1 Q. Do you know how the volume or energy level  
2 from September 1, 2005, to present  
3 delivered to the gas -- to the generating  
4 station compares to what the levels were  
5 immediately before September 1, 2005?  
6 A. It is approximately the same.  
7 Q. In your judgment, are you and the folks at  
8 Lorusso who are working with you able to  
9 do the basic operations necessary to  
10 deliver gas from the landfill system to  
11 the generating plant at this time? You  
12 have done it for two months.  
13 A. We have basically monitored. We haven't  
14 done, other than shimmying a couple of  
15 pipes, we haven't done a lot out there.  
16 Q. Tell me --  
17 A. Okay.  
18 Q. Go ahead. I didn't mean to cut you off.  
19 A. No. Go ahead.  
20 Q. What is it that you haven't done?  
21 A. Because of lack of information, I haven't  
22 done anything yet as far as well  
23 condition, corrective activity for wells.  
24 Q. Any other things generally that you

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1 believe need to be addressed at the  
2 wellfield at the landfill?  
3 A. Yes.  
4 Q. What else?  
5 A. I believe something has to be done there  
6 for an increased blower size at the flare  
7 station.  
8 Q. And that goes back to the initial problem  
9 that has been existing all along; right?  
10 A. Yes, it does.  
11 Q. Is there any particular reason why from  
12 the Lorusso folks' standpoint, now that  
13 you have both the gas collection and  
14 delivery system and the generating plant,  
15 is there some particular reason why you  
16 want to have pressure generated from the  
17 blowers at the flare rather than at the  
18 generating plant?  
19 A. Yes.  
20 Q. Why?  
21 A. Because the flares are not capable of  
22 running while their -- while the original  
23 flare blowers are trying to push gas to  
24 the generating plant.

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1 Q. What are the circumstances under which you  
2 would want the flares operating at the  
3 same time that the gas is going to the  
4 generating plant?  
5 A. If not all the engines are running, there  
6 is -- there is excess gas to be burned.  
7 Q. Under what circumstances would you not  
8 have all the engines running?  
9 A. Maintenance.  
10 Q. If all seven -- if there are no engines  
11 down for maintenance, how many engines  
12 operate?  
13 A. Usually six.  
14 Q. How long -- was there ever a time when you  
15 were running all seven?  
16 A. When we first started up, we ran all  
17 seven, until June of 2003. We had to take  
18 one offline for a lack of gas.  
19 Q. Starting in June of 2003?  
20 A. June of 2003. That's correct.  
21 Q. Yes?  
22 A. Yes.  
23 Q. I was getting a head nod, but not a yes.  
24 A. Okay.

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1 Q. Any time after June of 2003, did you run  
2 the seventh engine?  
3 A. Yes. We had -- well, we ran it partially  
4 on and off when we could get, not full  
5 load, but on a light load, when we had --  
6 when we were told we had extra gas. We  
7 ran it the latter part of 2003, the latter  
8 part meaning December, and early January  
9 of 2004.  
10 Q. Do you have records of when the engines  
11 are running?  
12 A. Yes.  
13 Q. And are they -- what time units? Are they  
14 by hour? Are they continuous or what?  
15 A. By hour usually.  
16 Q. Do you usually take more than one out for  
17 maintenance at a time?  
18 A. I won't say it hasn't happened, but we try  
19 not to do that as a scheduled routine, no.  
20 Q. So if you have seven engines and only  
21 enough gas for six and you take one out,  
22 why would you then take gas to the flare  
23 rather than running it to the engine that  
24 is there and wasn't running before one was

33 (Pages 126 to 129)

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1 taken out for maintenance?  
 2 A. Well, we wouldn't in the case of a  
 3 six-engine run plant with one standing by.  
 4 We would not have to.  
 5 Q. So there are some times now when you would  
 6 have enough gas to run seven when one had  
 7 maintenance?  
 8 A. We have done that. Yes.  
 9 Q. Are there operational manuals for  
 10 equipment at the flare?  
 11 A. There are flare operational manuals. Yes.  
 12 Q. Do you have those?  
 13 A. They are in the office of the landfill.  
 14 Q. Okay. Are there any manuals that you know  
 15 of that you would expect to have  
 16 associated with any aspect of the landfill  
 17 gas collection and delivery system that  
 18 you do not have?  
 19 A. I don't have or have not seen -- I don't  
 20 know if you would call it a manual -- any  
 21 information as to gas well configuration,  
 22 sump -- out on the landfill now -- sump  
 23 configurations, which are part of the  
 24 condensate collection system. I have no

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1 idea of what type of equipment is  
 2 underground there, meaning pumps, no  
 3 knowledge, and I have seen -- personally I  
 4 have seen no information on that.  
 5 Q. Is there anything in terms of day-to-day  
 6 ongoing delivery of gas, moving gas from  
 7 the system to the generating plant, that  
 8 are necessary to have?  
 9 A. Well, in the ongoing? They are not  
 10 necessary unless I have a problem on the  
 11 landfill and I don't know where the  
 12 problem is or what is out there for  
 13 equipment.  
 14 Q. Have you encountered that to date?  
 15 A. Not yet.  
 16 Q. Is there anything else -- let me try to  
 17 distinguish between two types of  
 18 information for operation. I would like  
 19 to try to distinguish between information  
 20 that you think would be necessary or even  
 21 just useful in trying to evaluate the  
 22 condition of the system, which would be  
 23 historical in nature and the sorts of  
 24 things you have said here now, knowing

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1 exactly physically what is out there and  
 2 where it is located and so forth. That's  
 3 one thing of that you would need there to  
 4 take care of existing problems at the  
 5 landfill and to identify what might be  
 6 going on if new problems develop. Okay?  
 7 That phalanx of things. Do you understand  
 8 what I am trying to get to?  
 9 A. Yes.  
 10 Q. And then there are the what do I need to  
 11 know and have in order to bring the gas  
 12 that is generated at the landfill through  
 13 the piping system in its current condition  
 14 to my generating plant to change the  
 15 vacuum and do whatever else needs to be  
 16 done at the individual wells out in --  
 17 A. I don't know that.  
 18 Q. And Shaw is doing that for you; right?  
 19 A. Yes.  
 20 Q. And they apparently seem to know enough  
 21 from some way to be able to carry that out  
 22 satisfactorily?  
 23 A. Well, their employers are certified to do  
 24 that type of work.

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1 Q. And then there is whatever is going on at  
 2 the flares on the landfill side; correct?  
 3 A. Correct.  
 4 Q. And you believe you have the information  
 5 necessary to know what is going on in the  
 6 flares -- at the flares from an  
 7 operational standpoint, whatever goes on  
 8 in there; is that right?  
 9 A. I would not say at this point I have  
 10 everything I need.  
 11 Q. Okay. What else do you need for the --  
 12 A. I don't know everything I need because I  
 13 haven't seen what is available.  
 14 Q. Okay. But so far at least, you have not  
 15 -- the gas has continued to flow at  
 16 approximately the same rate as it did  
 17 before September 1, and you haven't  
 18 encountered a problem that you have not  
 19 had sufficient information to address to  
 20 date?  
 21 A. To date, that's correct.  
 22 Q. Okay. Have you provided or tried to -- of  
 23 the things that you believe exist but you  
 24 don't have, have you recorded those

34 (Pages 130 to 133)



Page 134

1 somewhere and memorialized them and said  
 2 to anyone, "I need the following things"?  
 3 A. Yes. We did put a list together.  
 4 Q. Okay. I saw a list that was put together  
 5 by Mr. Adams, which was then copied  
 6 verbatim into Mr. Lorusso's -- one of  
 7 Mr. Lorusso's affidavits. Are there -- do  
 8 you know of that list?  
 9 A. No.  
 10 MR. FERREY: So you are up to  
 11 speed, here is that list.  
 12 (Handing Exhibit No. 22 to the  
 13 witness.)  
 14 MR. BLANTON: And Mr. Ferrey is  
 15 handing you exhibit?  
 16 MR. FERREY: Exhibit 22 that was  
 17 marked.  
 18 MR. BLANTON: Exhibit 22.  
 19 (Pause.)  
 20 (The witness viewing Exhibit  
 21 No. 22.)  
 22 MR. BLANTON: Oh, and I am aware  
 23 of another list.  
 24 BY MR. BLANTON:

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1 Q. There was a list put together in a letter  
 2 that came to Plainville Gas Producers, and  
 3 I don't remember who signed it, but it was  
 4 August 23. There was a letter that went  
 5 to I think Curt Ranger or Rick DiGia -- it  
 6 went to Rick DiGia.  
 7 A. That would probably be part and parcel of  
 8 the list I was looking for.  
 9 Q. Okay.  
 10 A. This, I would have to read.  
 11 (Pointing to Exhibit No. 22.)  
 12 Q. But in late August before you took over,  
 13 you put together a list for someone, "This  
 14 is the list of things I think I need"?  
 15 A. I put together a list of the things that I  
 16 thought I would need, and I submitted it  
 17 to my superiors.  
 18 Q. Who specifically did you give it to?  
 19 A. Henry Grilli.  
 20 Q. Okay. And that would have been before  
 21 September 1?  
 22 A. Correct.  
 23 Q. Okay. Have you seen anything that would  
 24 be characterized as the as-built drawings

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1 of the collection system and flare station  
 2 with detailed drawings? I would guess  
 3 those would be the sorts of things --  
 4 A. No.  
 5 Q. -- that were Exhibit 66.  
 6 A. I have certainly not seen a finished  
 7 drawing.  
 8 Q. Okay. What is out there that is under  
 9 lock and key? Is there a locked desk to  
 10 get into the landfill --  
 11 A. The flare station is locked, is  
 12 encompassed by a chainlink fence. The  
 13 gate to the landfill is locked, has a  
 14 lock.  
 15 Q. Do you know who put those locks on --  
 16 A. The --  
 17 Q. I am sorry. Go ahead.  
 18 A. No. I don't. It -- it could -- I believe  
 19 probably Allied.  
 20 Q. Okay. You have keys to all of those  
 21 locks?  
 22 A. I do now.  
 23 Q. Where did you get them?  
 24 A. From Allied.

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1 Q. All right. Are there any other locked --  
 2 are there any locked areas anywhere out  
 3 there that you need access to for which  
 4 you do not now have keys?  
 5 A. None that I have encountered so far.  
 6 Q. I think you told me earlier there was a  
 7 site plan with gas extraction points. It  
 8 wasn't the one that I had shown you,  
 9 but --  
 10 A. Right. Yes.  
 11 Q. -- is that still around?  
 12 A. Yes.  
 13 Q. Okay. Is there an electronic flare  
 14 monitoring system?  
 15 A. Yes.  
 16 Q. Is all the hardware for that present?  
 17 A. Is it all there?  
 18 Q. Yes. I mean that is what it is; right?  
 19 A. Yes. I believe it to be there.  
 20 Q. And that is run by computer?  
 21 A. Correct.  
 22 Q. And the computer is there?  
 23 A. Yes.  
 24 Q. Do you have instructions on how the system

35 (Pages 134 to 137)



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1 works?  
 2 A. On the monitoring device?  
 3 Q. Yes.  
 4 A. Yes. There was a book for that.  
 5 Q. Do you know of any mechanical drawings or  
 6 electrical schematics that you have?  
 7 A. There are piece -- I will call them  
 8 piecemeal drawings, not very many. My  
 9 electrician has a set of drawings. There  
 10 is a set of drawings when they came first  
 11 to -- with the project, but they were  
 12 modified so many times, I'm not -- I'm not  
 13 aware of seeing a finished as-built  
 14 electrical schematic, as built and as  
 15 modified.  
 16 Q. What about as-built drawings for the flare  
 17 control systems?  
 18 A. That's what we're talking about.  
 19 Q. Okay.  
 20 A. The electrical control systems.  
 21 Q. That's the same thing?  
 22 A. Yes.  
 23 Q. Do you have specifications for the blower  
 24 system that is at the flares?

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1 A. Yes. Those -- those are in the respective  
 2 flare manuals.  
 3 Q. Okay. So you have the flare and blower --  
 4 A. Yes.  
 5 Q. -- operation and maintenance manuals?  
 6 A. Yes. Yes, we do.  
 7 Q. And then these are taken from the list you  
 8 are looking at. There are also  
 9 manufacturer and O and M manuals for all  
 10 equipment and information systems. Are  
 11 there any such equipment or systems that  
 12 you don't have manuals for?  
 13 A. I don't have any information on any of the  
 14 pumps, condensate pumps.  
 15 Q. Anything else you can think of that you  
 16 don't have the manuals for?  
 17 MR. FERREY: If you know.  
 18 A. I'm not quite sure. There are some  
 19 electric or electronic valves out there.  
 20 I don't know. I don't think I have seen  
 21 any information on.  
 22 Q. Is that part of what your folks have to  
 23 deal with, or is that part of what Shaw is  
 24 doing?

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1 A. No. That is part of what I have to deal  
 2 with.  
 3 Q. Okay.  
 4 A. That is in the flare station controls.  
 5 Q. Some electronic valves?  
 6 A. Electric. Electronic. Electrically-  
 7 driven motorized valves. Yes.  
 8 Q. Does someone in your organization know how  
 9 to operate those, at least basic  
 10 operations, without the manuals?  
 11 A. The basic operation, the computer operates  
 12 the valve. There is a manual bypass on  
 13 the valve that is quite obvious. But if  
 14 there is anything wrong with the valve,  
 15 there is no information as to what is  
 16 inside, you know, like an owner's manual.  
 17 Q. Do you have someone who knows how to  
 18 operate the condensate pumps?  
 19 A. No.  
 20 Q. Okay. Does Shaw do that?  
 21 A. No.  
 22 Q. Or do you do it?  
 23 A. Well, the condensate pumps operate  
 24 automatically, until they fail.

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1 Q. Okay.  
 2 A. It is not a manual setup. And thus far,  
 3 they haven't failed.  
 4 Q. Okay. What plans do you have for  
 5 addressing conditions at the landfill  
 6 collection system, gas collection system,  
 7 you know, overall and as specific as you  
 8 know at this time?  
 9 A. I have -- I have a plan of the piping as  
 10 it was done. I don't have, to my  
 11 knowledge, any other plan.  
 12 Q. Okay.  
 13 A. Except one similar to yours that doesn't  
 14 show the piping and only shows well  
 15 location.  
 16 Q. I used an ambiguous -- a word with  
 17 multiple definitions.  
 18 Have you as yet given thought to  
 19 what you might do to address the  
 20 conditions that exist there now that were  
 21 the subject of discussion and dispute  
 22 between the parties from at least early  
 23 2004 until the end of the relationship?  
 24 A. I have thoughts of directions I want to go

36 (Pages 138 to 141)

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1 in. Yes.  
 2 Q. Mr. Lorusso indicated that you all were  
 3 developing plans for how you would address  
 4 the situation?  
 5 A. Yes. That's correct.  
 6 Q. Tell me how far along are you with that.  
 7 What have you got in mind so far?  
 8 A. Well, as I said before, I'm still trying  
 9 to accumulate information on the  
 10 wellfield. We have contacted  
 11 representatives of Siemens group, who are  
 12 the manufacturers of the gas analyzer that  
 13 doesn't work properly. We have contacted,  
 14 although we have not met with yet,  
 15 representatives of the company LFG  
 16 Specialties that manufactures the large  
 17 flare that is in that compound.  
 18 Q. And for what purpose?  
 19 A. We would like them to come out onsite and  
 20 evaluate the flare with us and help us to  
 21 decide the best route in order to be able  
 22 to operate the flare and partial  
 23 generation plant at the same time when it  
 24 becomes necessary.

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1 Q. What is the last thing you said?  
 2 A. Partial, meaning some percent of the  
 3 generation plant, maybe 50 percent. If we  
 4 have a problem, a major problem over  
 5 there, I have to be able to flare gas and  
 6 still operate some engines.  
 7 Q. I see.  
 8 A. And that flare cannot do it presently.  
 9 Q. What are the problems with the gas  
 10 analyzer?  
 11 A. It is old and outdated.  
 12 Q. Any reason to think it is providing  
 13 inaccurate data at present?  
 14 A. Oh, I know it is providing inaccurate  
 15 data.  
 16 Q. In what way?  
 17 A. It's not functioning.  
 18 Q. At all?  
 19 A. It is not -- it is not -- it is not  
 20 providing methane percentage. It is  
 21 providing cubic foot of flow, but not  
 22 methane percentage.  
 23 Q. Is there any other way to determine that?  
 24 A. I average the readings that are taken by

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1 the Shaw Group to compensate for the time  
 2 being.  
 3 Q. Do you have any idea how long that has  
 4 been a problem?  
 5 A. It would be a guess at best. I would say  
 6 well over a year.  
 7 Q. Did Plainville Gas Producers have to  
 8 provide methane percentage information to  
 9 Lorusso?  
 10 A. Yes.  
 11 Q. Did they do that? Did they provide you  
 12 with numbers?  
 13 A. Yes. But they were getting them from the  
 14 Shaw Group.  
 15 Q. The same way?  
 16 A. Yes.  
 17 Q. All right.  
 18 A. And sometimes they didn't get them from  
 19 the Shaw Group, and they asked me to give  
 20 it to them, because my plant monitors  
 21 that.  
 22 Q. Do you know who at the Shaw Group they  
 23 were getting them from?  
 24 A. Joel Falbo was the technician at that

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1 time.  
 2 Q. All right. Did they have a specific, the  
 3 Shaw Group, have a specific technician who  
 4 is doing this work out at the landfill  
 5 now?  
 6 A. Dan Leahy.  
 7 Q. So he did it from Rhode Island?  
 8 A. Well, he is in Rhode Island. He comes to  
 9 the landfill and does the work. Yes.  
 10 Q. How often?  
 11 A. Once a week.  
 12 Q. Do you know what he charges Lorusso Group  
 13 to do that?  
 14 A. I have that information, but I can't  
 15 recite it to you right now. I don't  
 16 remember what the --  
 17 Q. Do you remember approximately how much it  
 18 is for his services?  
 19 A. I would be guessing. Not accurate. And  
 20 it is not he that charges. It is the Shaw  
 21 Group. He is an employee of the Shaw  
 22 Group.  
 23 Q. Okay. But I interrupted you. You said  
 24 Siemens, the LFG folks. What else do you

37 (Pages 142 to 145)

Page 146

1 have in mind of doing?  
 2 A. I want to do wellfield analysis to see  
 3 what -- what the condition of every well  
 4 is.  
 5 Q. Do you know yet how you would undertake  
 6 that effort?  
 7 A. Well, I have been trying to accumulate  
 8 information.  
 9 Q. Did the -- go ahead.  
 10 A. I recently -- recently meaning last Friday  
 11 afternoon -- received a copy of a report  
 12 from URS that was done for Allied and DTE,  
 13 I believe.  
 14 Q. Did you --  
 15 A. And I have -- I have been analyzing that.  
 16 I have not completed it yet, but looking  
 17 at that to try and determine what my best  
 18 move would be to make a correction.  
 19 Q. Do you remember the date of the report?  
 20 A. June 20, 2005.  
 21 Q. Are you aware --  
 22 MR. BLANTON: Well, I will get  
 23 that first.  
 24 Q. I show you what has been marked -- I show

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1 you, this is a copy of Exhibit 17.  
 2 (Handing Exhibit No. 17 to the  
 3 witness.)  
 4 Q. Is that it?  
 5 (Pause.)  
 6 (The witness viewing Exhibit  
 7 No. 17.)  
 8 A. Yes.  
 9 Q. I will give you a copy of --  
 10 A. It appears to be it.  
 11 Q. I will give you a copy of what appears to  
 12 be marked Exhibit 18, which is a followup  
 13 dated July 12th.  
 14 (Handing Exhibit No. 18 to the  
 15 witness.)  
 16 Q. Have you seen that?  
 17 (Pause.)  
 18 (The witness viewing Exhibit  
 19 No. 18.)  
 20 A. No, I have not.  
 21 Q. Other than the July 20 report, have you  
 22 seen any reports or correspondence between  
 23 URS and the Massachusetts Department of  
 24 Environmental Protection?

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1 A. No, I have not.  
 2 Q. Have you discussed any of the URS reports  
 3 to the Massachusetts Department of  
 4 Environmental Protection with Mr. Adams or  
 5 anyone else?  
 6 A. No, have not.  
 7 Q. There is a reference in the Complaint --  
 8 and because we are pressed for time, I  
 9 can't find it immediately -- that there is  
 10 a reference to a report, I think, from  
 11 November that there was a draft and a  
 12 final report detailing conditions of wells  
 13 that supposedly DTE and Plainville  
 14 Producers know about. Have you seen any  
 15 reports about well conditions other than  
 16 this June 20th report?  
 17 A. We did -- I assisted -- I assisted in a  
 18 camera survey of 17 wells.  
 19 Q. And Shaw put that out, is that right, I  
 20 think?  
 21 A. Shaw did the survey.  
 22 Q. All right.  
 23 A. I assisted the man, because they had  
 24 problems getting the second guy on the

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1 site.  
 2 Q. Did you ever see any report of the results  
 3 of that?  
 4 A. No.  
 5 Q. Did you ever hear what the results of that  
 6 were?  
 7 A. I did -- I didn't hear a formal report. I  
 8 mean I obviously watched the video,  
 9 because I was the one sticking the camera  
 10 down the well.  
 11 Q. And who at Shaw were you working with?  
 12 A. Joel Falbo.  
 13 Q. And was there anyone from Plainville Gas  
 14 Producers there?  
 15 A. No.  
 16 Q. Did you discuss with Mr. Falbo what the  
 17 camera was seeing down there?  
 18 A. Yes.  
 19 Q. And what did he tell you that he was  
 20 seeing generally? Not well by well.  
 21 A. Obstructions and collapses and pinching  
 22 pipes and just blockages.  
 23 Q. Other than that experience and what you  
 24 saw on the June 20, 2005 letter from URS

38 (Pages 146 to 149)

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## DEPONENT'S ERRATA SHEET AND SIGNATURE INSTRUCTIONS

The original of the Errata Sheet  
has been delivered to Steven E. Ferrey,  
Esq.

When the Errata Sheet has been completed by the deponent and signed, a copy thereof should be delivered to each party of record and the ORIGINAL delivered to W.C. Blanton, Esq., to whom the original deposition transcript was delivered.

## INSTRUCTIONS TO DEPONENT

After reading this volume of your deposition, indicate any corrections or changes to your testimony and the reasons therefor on the Errata Sheet supplied to you and sign it. DO NOT make marks or notations on the transcript volume itself.

REPLACE THIS PAGE OF THE TRANSCRIPT WITH  
THE COMPLETED AND SIGNED ERRATA SHEET WHEN  
RECEIVED.

Page 184

# CERTIFICATE

Commonwealth of Massachusetts  
Plymouth, ss.

I, Judith McGovern Williams, a  
Registered Professional Reporter and  
Notary Public in and for the Commonwealth  
of Massachusetts, do hereby certify:

That DAVID J. LaFLAMME, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by the said witness.

IN WITNESS WHEREOF, I have  
hereunto set my hand this            day of  
                                , 2005.

Judith McGovern Williams  
Registered Professional Reporter  
Certified Realtime Reporter  
Certified LiveNote Reporter

Certified Shorthand Reporter No. 130993

My Commission expires:  
April 2, 2010

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ATTACH TO DEPOSITION OF: DAVID J.  
LaFLAMME

CASE: PLAINVILLE GENERATING CO., L.L.C.  
VS. DTE BIOMASS ENERGY, INC. and  
PLAINVILLE GAS PRODUCERS, INC.

## ERRATA SHEET

**INSTRUCTIONS:** After reading the transcript of your deposition, note any change or correction to your testimony and the reason therefor on this sheet. DO NOT make any marks or notations on the transcript volume itself. Sign and date this errata sheet (before a Notary Public, if required). Refer to Page 182 of the transcript for errata sheet distribution instructions. .

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I have read the foregoing transcript of my testimony, and except for any corrections or changes noted above, I hereby subscribe to the transcript as an accurate record of the statements made by me.

DAVID J. LaFLAMME

— **Exhibit D** —

**Plainville Generating Co., LLC's Initial Disclosures Pursuant  
To Fed. R. Civ. P. 26(a), Dated November 14, 2005**



UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

PLAINVILLE GENERATING CO., LLC,

Plaintiff,

vs.

DTE BIOMASS ENERGY, INC.

AND

PLAINVILLE GAS PRODUCERS, INC.,

Defendants.

ORIGINAL

C.A. 05-12168GAO

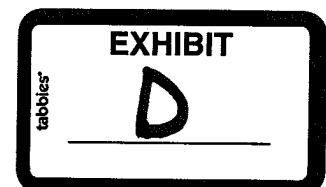
PLAINVILLE GENERATING CO., LLC'S  
INITIAL DISCLOSURES PURSUANT TO FED. R. CIV. P. 26(a)

Pursuant to Fed. R. Civ. P. 26(a), Plaintiff Plainville Generating Co., LLC ("PGC") hereby submits its initial disclosures to Defendants, DTE Biomass Energy, Inc. and Plainville Gas Producers, Inc. PGC reserves the right to supplement or amend these disclosures.

INITIAL DISCLOSURES

**Fed. R. Civ. P. 26(a)(1)(A):** [T]he name and, if known, the address and telephone number of each individual likely to have discoverable information that the disclosing party may use to support its claims or defenses, unless solely for impeachment, identifying the subjects of the information.

1. Gerard C. Lorusso, 3 Belcher Street, Plainville, Massachusetts, Tel: (508) 695-3252. Mr. Lorusso has information about the contractual and other aspects of the relationship with defendants at issue in the litigation.
2. Henry G. Grilli, 3 Belcher Street, Plainville, Massachusetts, Tel: (508) 695-3252. Mr. Grilli has information about the financial losses incurred by Plaintiff at issue in the litigation.
3. David J. LaFlamme, 3 Belcher Street, Plainville, Massachusetts, Tel: (508) 695-3252. Mr. LaFlamme has information about the technical operation of Plaintiff's renewable



electricity generation facility and former asphalt facility at issue in the litigation.

PGC's investigations are continuing. PGC reserves the right to supplement this answer should additional witnesses become known to it.

**Fed. R. Civ. P. 26(a)(1)(B):** [A] copy of, or a description by category and location of, all documents, data compilations, and tangible things that are in the possession, custody, or control of the party and that the disclosing party may use to support its claims or defenses, unless solely for impeachment.

PGC possesses documents regarding the following topics:

1. All attachments to the Complaint;
2. All documents marked as exhibits in the Deposition of Mr. Adams
3. All documents marked as exhibits in the Deposition of Mr. Lorusso;
4. All documents marked as exhibits in the Deposition of Mr. LaFlamme;
5. July 29, 2005 letter from Richard DiGia to Vice President, Laidlaw Waste Systems assigning contract.
6. August 23, 2005 letter from Henry Grilli to Richard DiGia requesting information in one-page attachment.
7. August 22, 1996 letter from SCS Engineers to Curtis Ranger entitled Final Report – Technical Due Diligence Investigation for Landfill Gas Recovery with attachments.
8. February 2, 2000 letter from James Pena to David LaFlamme regarding landfill gas supply to Lorusso facilities.
9. Chart dated June 23, 2004 of Video Well Survey Results.
10. April 27, 2004 letter from DiGia to D. LaFlamme.
11. Electricity Power Sale Confirmation Agreement and first amendment thereto between PGC and Constellation New Energy, Inc.
12. Certificate Purchase Agreement between PGC and Massachusetts Electric Co., et al, and Amendment thereto.
13. PGC Energy and Emissions Reports for 2003, 2004, 2005.

14. September 14, 2004 letter from Massachusetts DEP, David Ellis, to Ralph Larrimore, Allied.
15. LFG Generation and Collection Estimates, Plainville Sanitary Landfill.
16. July 7, 2004 fax from Mr. Van Hoy to Mr. LaFlamme.
17. April 27, 2004 faxed letter from R. DiGia to D. LaFlamme.
18. April 12, 2004 fax from Mr. Van Hoy to Mr. LaFlamme.
19. August 26, 2004 fax from Mr. Van Hoy to Mr. LaFlamme.

These documents are available at the offices of PGC's counsel, LeBoeuf, Lamb, Greene & MacRae, LLP, 260 Franklin St., Boston, Massachusetts, and will be provided upon request.

PGC's investigations are continuing. PGC reserves the right to supplement this answer should additional documents become known to it.

**Fed. R. Civ. P. 26 (a)(1)(C):** [A] computation of any category of damages claimed by the disclosing party, making available for inspection and copying as under Rule 34 the documents or other evidentiary material, not privileged or protected from disclosure, on which such computation is based, including materials bearing on the nature and extent of injuries suffered.

PGC has suffered damages that are ongoing. Non-privileged documents supporting PGC's damage claims will be made available for inspection and copying at a time and place mutually convenient for the parties. These damages include, but are not limited to, the payments made to Defendants for the Agreed Modifications, the additional costs incurred for the failure of the Agreed Modifications, lost profits from reduced sales of energy and renewable energy credits which losses have been running at more than \$300,000 annually, the added cost of payments to Allied in the amount of \$210,000 annually and the cost of necessary consultants to assist with the Collection System, internal staff costs incurred, the cost of necessary repairs and deferred

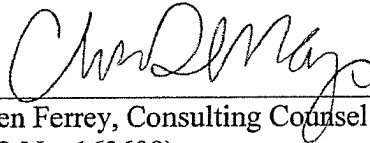
maintenance, future damages, in addition to damages for tort and unfair and deceptive acts and practices. PGC reserves the right to supplement and amend these ongoing damages upon ongoing operation relating to the monetary value of internal costs such as lost productivity, reassignment of employees incurred due to Defendants' conduct.

PGC also seeks recovery of attorneys' fees, expert witness fees, and costs in an amount to be proven at trial, as well as exemplary damages to the full extent permitted by law.

**Fed. R. Civ. P. 26 (a)(1)(D):** [F]or inspection and copying as under Rule 34 any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment.

Not applicable to PGC.

Respectfully submitted,  
**PLAINVILLE GENERATING CO., LLC**  
By its counsel



Steven Ferrey, Consulting Counsel  
(BBO No. 163600)  
Christopher L. DeMayo (BBO No. 653481)  
LEBOEUF, LAMB, GREENE & MACRAE, L.L.P.  
260 Franklin Street  
Boston, MA 02110  
(617) 748-6800

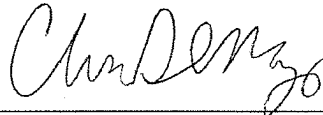
Dated: November 18, 2005

**CERTIFICATE OF SERVICE**

I, Christopher L. DeMayo, hereby certify that this 14th day of November, 2005, I caused a true copy of the foregoing Plainville Generating Co., LLC's Initial Disclosures Pursuant to Fed. R. Civ. P. 26(a) to be served on counsel of record for Plainville Gas Producers, Inc. and DTE Biomass Energy, Inc. at the following addresses:

Wesley S. Chused, Esq.  
Looney & Grossman, LLP  
101 Arch Street  
Boston, MA 02110  
(617) 951-2800  
(via US mail)

W.C. Blanton, Esq.  
Blackwell, Sanders, Peper & Martin, LLP  
4801 Main Street  
Suite 1000  
Kansas City, MO 64112  
816-983-8000  
(via US mail)



Christopher L. DeMayo